

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RACHEL COLANGELO and KATHLEEN) Case No.
PARADOWSKI, individually and on) 6:18-cv-01228
behalf of a class of similarly) [LEK/DEP]
situated individuals,)
)
Plaintiff,)
)
vs.)
)
CHAMPION PETFOODS USA INC. and)
CHAMPION PETFOODS LP,)
)
Defendants.)
_____)

VIDEO-RECORDED VIDEOCONFERENCE
DEPOSITION OF STEFAN BOEDECKER
Tuesday, March 16, 2021
Volume I

Reported by:
ROCHELLE HOLMES
CSR No. 9482
Job No. 4487163
PAGES 1 - 105

Page 2

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

RACHEL COLANGELO and KATHLEEN) Case No.

PARADOWSKI, individually and on) 6:18-cv-01228

behalf of a class of similarly) [LEK/DEP]

situated individuals,)

)

Plaintiff,)

)

vs.)

)

CHAMPION PETFOODS USA INC. and)

CHAMPION PETFOODS LP,)

)

Defendants.)

_____)

Deposition of STEFAN BOEDECKER, testifying from

Henderson, Nevada, taken on behalf of Defendants, via

videoconference, beginning at 12:22 P.M. and ending at

3:58 P.M. on Tuesday, March 16, 2021, before ROCHELLE

HOLMES, Certified Shorthand Reporter No. 9482, Certified

Realtime Reporter No. 0123.

Page 4

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

APPEARANCES (CONTINUED):

VIDEOGRAPHER: SCOTT SLATER

(Appearing via videoconference.)

Page 3

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

APPEARANCES:

For Plaintiff:

GUSTAFSON GLUEK PLLC

BY: RAINA C. BORRELLI, ATTORNEY

120 South 6th Street, Suite 2600

Minneapolis, Minesota 55402

(612) 333-8844

Rborrelli@gustafsongluek.com

(Appearing via videoconference.)

For Defendants:

GREENBERG TRAUIG

BY: RICK SHACKELFORD, ATTORNEY

1840 Century Park East, Suite 1900

Los Angeles, California 90067

(310) 586-3878

Shackelfordr@gtlaw.com

(Appearing via videoconference.)

--and--

GREENBERG TRAUIG, P.A.

BY: JARED KESSLER, ATTORNEY

333 SE 2nd Avenue

Miami, Florida 33131

(305) 579-0754

Coulson@gtlaw.com

(Appearing via videoconference.)

Page 5

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

WITNESS EXAMINATION BY PAGE

STEFAN BOEDECKER

Volume I

MR. SHACKELFORD 7

MS. BORRELLI 101

EXHIBITS

NUMBER DESCRIPTION PAGE

(None attached.)

<p style="text-align: right;">Page 6</p> <p>1 Tuesday, March 16, 2021 2 12:22 P.M. - 3:58 P.M. 3 4 THE VIDEOGRAPHER: Good afternoon. We are on 5 the record at 12:22 p.m. Pacific Daylight Time on 6 March 16th, 2021. Please note that the microphones are 7 sensitive and may pick up whispering, private 8 conversations or cellular interference. Audio and 9 video recording will continue to take place unless all 10 parties agree to go off the record. 11 This is Media Unit 1 of the video-recorded 12 deposition of Stefan Boedeker, taken by counsel for 13 defendants in the matter of Rachel Colangelo and 14 Kathleen Paradowski, et al., versus Champion Petfoods 15 U.S.A. Inc. and Champion Petfoods LP, filed in the 16 United States District Court, Northern District of New 17 York. Case No. 6:18-cv-01228. 18 This deposition is being held as a virtual 19 deposition via Zoom with the witness located in 20 Henderson, Nevada. My name is Scott Slater from the 21 firm Veritext Legal Solutions and I am the 22 videographer. The court reporter is Shelley Holmes 23 from the firm Veritext Legal Solutions. I am not 24 related to any party in this action, nor am I 25 financially interested in the outcome.</p>	<p style="text-align: right;">Page 8</p> <p>1 Colangelo, this will also apply to the Illinois case and 2 the Michigan case; is that right? 3 MS. BORRELLI: Yes, that's my understanding as 4 well. 5 MR. SHACKELFORD: I don't want to put any of 6 us through this three times, so even though it's 7 captioned under one we'll have the understanding that it 8 will be the same as if we were taking it in each of the 9 cases individually. 10 Does that work for you? 11 MS. BORRELLI: Yes. 12 MR. SHACKELFORD: Okay. Super. 13 Q BY MR. SHACKELFORD: Mr. Boedeker, thanks for 14 your patience. 15 Again, the reason I just did the little 16 discussion is I'm actually going to ask you most 17 questions I think tee'd off of your report in the 18 Illinois case, which was for the case styled Zarinebaf. 19 MR. SHACKELFORD: Did I get that close, Raina? 20 MS. BORRELLI: I've actually never met that 21 particular plaintiff, so we'll go with it. 22 MR. SHACKELFORD: For the court reporter's 23 sake, last name is Z-A-R-I-N-E-B-A-F, so it'd be 24 Zarinebaf versus Champion Petfoods, and I suspect that 25 may be the last time I try to stumble over that name the</p>
<p style="text-align: right;">Page 7</p> <p>1 Counsel and all present will now state their 2 appearances and affiliations for the record. If there 3 are any objections to proceeding, please state them at 4 the time of your appearance, beginning with the noticing 5 attorney. 6 MR. SHACKELFORD: Rich Shackelford, Greenberg 7 Traurig, for the defendant Champion Petfoods. 8 MR. KESSLER: And Jared Kessler from Greenberg 9 Traurig for Champion. 10 MS. BORRELLI: Raina Borrelli from Gustafson 11 Gluek on behalf of the plaintiffs and the witness. 12 THE VIDEOGRAPHER: Thank you very much. 13 Will the court reporter please administer the 14 oath. 15 STEFAN BOEDECKER, 16 having been duly administered an oath in accordance with 17 CCP 2094, was examined and testified as follows: 18 19 EXAMINATION 20 BY MR. SHACKELFORD: 21 Q Thank you, Mr. Boedeker. 22 MR. SHACKELFORD: Ms. Borrelli, we had a 23 discussion off the record. It's my understanding that 24 we're actually taking the deposition in three different 25 cases. So it's -- even though the notice was done for</p>	<p style="text-align: right;">Page 9</p> <p>1 rest of the afternoon, so we'll have some mercy there. 2 Q BY MR. SHACKELFORD: So for purposes of our 3 record, your report in the Illinois case, we'll do it 4 that way, that's a lot of easier, consists of your 5 narrative report, your CV and some appendices; is that 6 right? 7 A That is correct, yes. 8 Q And you have before you the narrative report 9 which is about 70 -- I think your signature's on 10 Page 78; is that right? 11 A Yes. Let me just -- I have three stacks for 12 each suit. Let me just find the Illinois one. 13 Q Okay. 14 A Yes, I got it. I'll put it to the side here. 15 Q Great. And then as we talked, the appendices 16 are pretty voluminous. I think it's 300-and-some pages. 17 We haven't printed those out, you don't have those in 18 front of you, but if for any reason anyone needs to 19 point out anything in those appendices, you have access 20 to those and we can get at them; is that right? 21 A That is correct. I don't have a hard copy in 22 front of me, but I can have it printed out and then have 23 it here within minutes hopefully. I know that it's very 24 lengthy, but it should be -- it's feasible to print it 25 out where I am right now.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q And as I said, I don't think it will be 2 necessary and that's why we didn't go through the 3 exercise, but if we get there -- and by all means, if 4 you need to refer to anything in the appendices to 5 refresh your recollection or to answer the question, 6 then let me know and we'll make sure that we get 7 whatever you need in front of you. Okay? 8 A Okay. Understood. 9 Q Okay. And then as part of what you've got 10 before you, do you have your CV, which I think was 11 Appendix 1 to the report? 12 A I do have -- the CV is Exhibit A. I have that 13 in front of me as well. 14 Q Okay. Great. Because I will have some 15 questions that you may want to refer to that about. 16 But for each of the three cases we have 17 narrative report, CV, appendices and is that the 18 universe of your complete report for each of the three 19 cases? 20 A There is support materials that I've produced, 21 which are basically calculations that feed into the 22 tables and charts that I have through all of my reports, 23 that I have not here, and those are very voluminous data 24 files, some in the gigabyte size so I didn't bring 25 those.</p>	<p style="text-align: right;">Page 12</p> <p>1 think I'll have any questions about them, but I just 2 want to make sure that we are complete and that we've 3 got straight what your report is and -- 4 A Maybe what I also should point out that 5 there's an Exhibit B as well in the materials that were 6 part of my report, which is entitled List of Documents 7 Relied Upon, and it's just one page. That is -- 8 probably got lost in the resume and the CV, there's 9 actually another one-pager in there that is Exhibit B 10 from the report. 11 Q Thank you for pointing that out. I think I'll 12 probably have no questions about that too, but if we do 13 we'll get there and literally make sure we're on the 14 same page. 15 I'm going to need -- we've done this before, 16 you and I have done this before, I'm going to dispense 17 with a lot of the admonitions and other things and just 18 plow right into it, unless you have any questions before 19 we jump in? 20 A I don't have any questions. Thank you. 21 Q Okay. No reason you're unable to give your 22 best testimony today, is there? 23 A No reason. 24 Q Okay. As I admitted to you off the record, 25 what I really want to do is focus on, for the most part,</p>
<p style="text-align: right;">Page 11</p> <p>1 Q And I don't expect those are committed to 2 memory, but those have been made available to us; is 3 that right? 4 A That is correct. There was a production done 5 probably the day after the report was issued and these 6 files were transferred electronically. 7 Q And then this morning I think I got some 8 errata sheets that pertain to some of the tables or 9 appendices in the various reports; is that right? 10 A That is correct. There was an errata sheet 11 for a table that was -- the one that was in the report 12 or the ones I should say that were in the reports were 13 inserted incorrectly. And so I basically made available 14 the corrected. Those are like demographic information 15 about the survey participants. 16 Q Was the same errata done for each of the 17 three? I printed one out, but I didn't compare them. I 18 figured I'd just ask you as a shorthand way. 19 A The errata sheet looked exactly the same, it 20 replaced the entire table that had some entries. And 21 I -- I have no explanation how the wrong numbers came in 22 there, just incorrect table was inserted the day the 23 reports were submitted and I provided the corrected 24 table. 25 Q It's all the same to you, is it okay, I don't</p>	<p style="text-align: right;">Page 13</p> <p>1 things that are new. And for that I'm going to ask you 2 to turn to Page 67 in your Illinois report, and about 3 the middle of the page is a numbered eight and in bold 4 type says "Expectation Survey." 5 So if you can let me know when you get there. 6 A Yeah, this is printed double sided, so I found 7 it. 8 Q Okay. And put your thumb there if you could, 9 and then I'm going to look at Page 3 of that same 10 document. 11 A Page 3? 12 Q Yes, sir. 13 A Okay. I'm on Page 3 now. I have both pages 14 in front of me. 15 Q Okay. Great. What I'm interested in on 16 Page 3 is Paragraph 12 and then subparagraph E at the 17 bottom of the page. 18 A I'm reading E, yes. 19 Q Okay. And does Paragraph 12E, is that 20 describing the expectation survey that is discussed 21 beginning on Page 67 of your report? 22 A That is correct, E is a high level summary of 23 what is called numeral eight, expectation survey on 24 Page 67. 25 Q Okay. So the expectation survey,</p>

<p style="text-align: right;">Page 14</p> <p>1 Paragraph 12E, tells me the answer to why you did the 2 expectation survey, would that be accurate? 3 A I would think so. I mean, it's kind of like 4 written in that intent that it's a quick brief summary 5 about what the survey is about. And so that hopefully 6 answers your question of why it was written. 7 Q Okay. I thought that was probably the case, 8 but better to hear it from you than for me to guess. 9 Since you've got your CV in front of you, let 10 me ask you this question. 11 A Hold on a second. The CV got shuffled. 12 Q It's okay. 13 A Now I have three stacks in front of me, but 14 I've everything now. 15 Q There we go. How many expectation surveys 16 have you written before the one that's described here in 17 your report? 18 A I have performed multiple surveys to assess -- 19 descriptively assess consumers' expectations or 20 understanding. I may not always have called them 21 expectation survey. 22 Q Okay. 23 A But the essence behind here is to on simple 24 scales assess consumers' understanding of certain 25 issues. And so this is like a survey format that is</p>	<p style="text-align: right;">Page 16</p> <p>1 participants who were consumers of the product, what 2 they expected when they read a certain label. 3 Q BY MR. SHACKELFORD: Okay. Looking again at 4 Paragraph 12E, I'm looking at the last part and it says, 5 "Whether the alleged misrepresentations and omissions 6 would affect consumers' purchasing." 7 So can you explain to me what that means? 8 A Yeah, when one of the questions was if -- and 9 I could go to specific example, or just answer it more 10 generally, if something was the case about the product, 11 then I would ask questions about and if it was an 12 attribute that may change consumers' preferences for the 13 product, then the question was would they pay more or 14 less for the product. 15 Q Okay. So I think I understand. I asked you 16 about intent, and if I'm understanding the answer you 17 just gave me, what you were testing was not a change in 18 intent but a change in price; is that fair? 19 A Yeah. That is -- I mean, I think it's a fair 20 summary of what this expectation survey did, it just 21 looks descriptively, not in a cause and effect kind of 22 sense, but descriptively. If something changes, an 23 attribute changes, would consumers pay more or less for 24 that particular product. 25 Q Now I'm a little bit lost, I want to make sure</p>
<p style="text-align: right;">Page 15</p> <p>1 frequently used that I have used in the past. Again, I 2 might not have always called it expectation survey. 3 Q Was there some portion -- and I'm looking at 4 Page 1 of your CV, was there some portion of any of the 5 degrees that you pursued that are described under 6 education section that included as part of the pedagogy 7 writing and feeling and expectation survey? 8 A Within my statistics of both undergrad and 9 graduate studies, I took statistical sampling and survey 10 analysis classes. And within those survey design and 11 survey roll-out and survey -- or statistical analysis of 12 the survey results were part of the content or the 13 topics that were taught. 14 Q Again, referring back to the subpart 12E on 15 Page 3, is it accurate to say that what you were trying 16 to assess in your expectation survey is whether there 17 was a causal impact between the information people were 18 seeing in the survey and their purchase intent? 19 MS. BORRELLI: Object to form. 20 THE WITNESS: No. That was not the goal of 21 the survey. So I basically wanted to just figure out 22 what people expect when they read a certain label. But 23 I did not analyze the behavior or the purchase intent 24 based on those answers. What I did in Section 8 in my 25 report is just describe what consumers -- or</p>	<p style="text-align: right;">Page 17</p> <p>1 I understand. 2 Is what you were testing -- I'll describe it 3 and if I screw it up, tell me, but a summary, if you 4 knew this, would it have an effect on how much you would 5 pay? 6 A There was one line of questions about would it 7 make it more or less likely, and then one was kind of 8 asking would you -- let me find it here -- yeah, I was 9 looking for the actual wording, yeah. Would it make you 10 more or less likely to purchase the dog food shown. 11 So it's a change in attributes as explained in 12 the question itself, and then it's the question or the 13 answers are then listed as changes in -- it goes from 14 far less likely to far more likely to purchase the 15 product. 16 Q Okay. Again, sort of descriptive. Would it 17 be fair to say you were testing whether a change in 18 something would cause a change in how much they would 19 pay for it? 20 A Yeah, again, but not in a cause and effect. 21 I'm describing the results of the questions basically, 22 descriptive and give percentages. So if some attribute 23 changes then how much more likely from far less likely 24 to far more likely would somebody change their behavior 25 or their choices made.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q Do you have an opinion whether the -- I'll</p> <p>2 break them down, whether the misrepresentations caused a</p> <p>3 change in consumer behavior?</p> <p>4 A There's a general trend in the data, again,</p> <p>5 I'm describing the data, shows that consumers are more</p> <p>6 likely to purchase as measured by the two positive</p> <p>7 likelihood, more likely and far more likely when</p> <p>8 statements that are talking about positive attributes</p> <p>9 are true, and if omissions of attributes that are viewed</p> <p>10 generally as negative, then -- and then they actually</p> <p>11 have those attributes, then in general from observing</p> <p>12 the data then likely to purchase goes down.</p> <p>13 And that is overall from these descriptive</p> <p>14 statistics that consumers change -- consumers'</p> <p>15 preferences change when negative attributes are omitted</p> <p>16 or when positive attributes are basically stated but</p> <p>17 they are not true. That was the general conclusion. I</p> <p>18 think it's at the very end in the summary of conclusions</p> <p>19 I have one little paragraph that summarizes what I've</p> <p>20 just said.</p> <p>21 Q Just so make sure we're talking about the same</p> <p>22 thing, would that be Paragraph 188 of your report?</p> <p>23 A Yeah, that's exactly. It's Paragraph 188 on</p> <p>24 Page 78.</p> <p>25 Q Okay. And in part, Paragraph 188 reads,</p>	<p style="text-align: right;">Page 20</p> <p>1 show these trends that again the omission of something</p> <p>2 negative when disclosed would basically lower the</p> <p>3 likelihood to purchase. And if a misrepresentation of a</p> <p>4 positively viewed attribute has happened, then the same</p> <p>5 trend showed in the data.</p> <p>6 Q Based on the trends in the data, do you have</p> <p>7 an opinion, we'll separate them one at a time, based on</p> <p>8 the trends of the data produced by your expectation</p> <p>9 survey, do you have an opinion whether</p> <p>10 misrepresentations caused a change in the purchase</p> <p>11 intent of consumers?</p> <p>12 A I think that that is somewhat summarized in my</p> <p>13 last paragraph in 188 that there is some effect, some</p> <p>14 causes and effect, but I haven't quantified or deeper</p> <p>15 analyzed it. And I have stated what I call the</p> <p>16 descriptive level that just shows hugely varying</p> <p>17 percentages. And I think that is what I'm concluding in</p> <p>18 Paragraph 188.</p> <p>19 Q And would that same answer apply to omissions</p> <p>20 and whether the omissions caused a change in the</p> <p>21 purchase intention of consumers?</p> <p>22 A That's correct. I think I answered already</p> <p>23 earlier when the omission of something negative when</p> <p>24 disclosed causes a change in behavior and the</p> <p>25 misrepresentation or the presentation of an attribute</p>
<p style="text-align: right;">Page 19</p> <p>1 "Consumers are misled by Champion's packaging</p> <p>2 misrepresentations and omissions and that the</p> <p>3 misrepresentations and omissions have an impact on the</p> <p>4 purchase intention of consumers"; is that right?</p> <p>5 A That is correct. And I think I used slightly</p> <p>6 different wording when I described it more saying when</p> <p>7 they -- a misrepresentation of a positive attribute that</p> <p>8 ultimately is not true, then the purchase will be less</p> <p>9 likely. If an omitted negative attribute would have</p> <p>10 been disclosed to the consumer, then the purchase will</p> <p>11 likely also go down.</p> <p>12 Q And where you say "have an impact," does that</p> <p>13 mean the same thing as causes a change?</p> <p>14 A In this sense, I did not do that causal</p> <p>15 analysis. What I did, I asked those questions and</p> <p>16 ultimately concluded based on just a comparison of</p> <p>17 percentages that there's a change that can be observed</p> <p>18 throughout the questions and throughout the different</p> <p>19 surveys.</p> <p>20 Q Was the survey designed to test whether the</p> <p>21 misrepresentations or omissions caused a change?</p> <p>22 A It was designed to have a simple descriptive</p> <p>23 statistics, which in this case would be the percentages</p> <p>24 for the far less likely and less likely groups versus</p> <p>25 the more likely and far more likely groups. And so they</p>	<p style="text-align: right;">Page 21</p> <p>1 that's viewed as positive but then turns out to be</p> <p>2 misrepresentation has the same effect in lowering the</p> <p>3 person's likelihood.</p> <p>4 Q Okay. I think I understand what you said, I'm</p> <p>5 going to try to put it in my words and if I screw it up</p> <p>6 tell me, but I think if I understand what you're saying,</p> <p>7 the results of your expectation survey are directional,</p> <p>8 but you didn't try to quantify the impact; is that fair?</p> <p>9 A That's correct. I mean, let me define</p> <p>10 directional how I view it as a statistical definition.</p> <p>11 That there is a defect there and defect goes into the</p> <p>12 direction that I explained. In that sense it is</p> <p>13 directional and the statistical sense has that meaning</p> <p>14 there's an effect, and it is a positive or negative, but</p> <p>15 the effect is there, it's in the data.</p> <p>16 But what I did not do, and if I understand you</p> <p>17 or your second part of your question correctly, I did</p> <p>18 not run a separate model that says the impact is X or</p> <p>19 something like that.</p> <p>20 Q Okay. This is encouraging. I think we're a</p> <p>21 communicating. So thank you.</p> <p>22 With the CV in front of you, are there other</p> <p>23 cases that you could point to me where you've done --</p> <p>24 whether you've called it an expectation survey or not,</p> <p>25 where you wrote, fielded and analyzed the results of a</p>

<p style="text-align: right;">Page 22</p> <p>1 survey like the one you've called an expectation survey 2 in your report for this case? 3 A Let me just go through. This is a long list. 4 Sorry. This takes a bit longer, but I'm going as fast 5 as I can. 6 Yeah. For example, I'm on -- it's the No. 6 7 in the deposition listing, which is Page 8 in the CV 8 portion, Exhibit A, and No. 6 is -- that was a class 9 action where it was about the wording in certain 10 automobile insurance policies, and they are part of that 11 work was to figure out what people understood when they 12 read certain sections of the automobile insurance 13 policy. And this was about some uninsured motorist 14 coverage for accidents, if I recall it properly. 15 Q Any others? 16 A Yes. I'm continuing to go through here. 17 Q I appreciate that. Thank you. 18 A No. 22, there was also some survey work 19 involved there, that was a case alleging discriminatory 20 distribution of public funding for different public 21 transportation modes. And they were -- a survey work of 22 users of the different modes of transportation. And 23 they had questions about expectations of how money was 24 spent and how it affected their particular mode of 25 transportation that they were using most.</p>	<p style="text-align: right;">Page 24</p> <p>1 they understood what they expected when they would see a 2 statement that would say that repairs at a nominal fee. 3 And it also did -- a second part in that survey was to 4 figure out what consumers understand under a lifetime 5 warranty versus a limited lifetime warranty. 6 And there's another case that is not on here, 7 but that was about Kombucha drinks. In that case I 8 wasn't deposed, but that case settled. And there again, 9 to calculate injunctive relief value I did a survey to 10 assess the different understandings and expectations of 11 people when they read some of the statements. Since I'm 12 not a Kombucha drinker, I don't recall the exact detail 13 there, but it was about pasturization of the product and 14 the existence of live bacterial cultures in the product. 15 Q Okay. Is that all of them? 16 A Yeah, that comes to mind by going through the 17 CV and -- and yeah, jogging my memory about this one 18 case that is not on here. 19 Q Okay. Thank you for that. 20 And I just want to go back and work them in 21 order, so No. 6, the auto insurance case, were you 22 testing a causal proposition with the survey you did in 23 that matter? 24 A No. I would not call it a causal effect. The 25 question was about the wording under this uninsured</p>
<p style="text-align: right;">Page 23</p> <p>1 Another example is on Page 10, J. Morrison 2 versus The Vons Company. Part of that case was there 3 was -- I was retained by The Vons Company and it was a 4 class action about misleading coupon redemption 5 policies. And their part -- the wording of particular 6 coupon campaigns was tested there, which would -- in the 7 context of this case I call that an expectation survey. 8 And there I think it was particularly about double 9 coupon campaigns and the expiration of those double 10 coupons. 11 Should I continue? 12 Q If there's any others, because I want to loop 13 back on some of those and just probe with you. I want 14 to make sure we get a complete list. By all means, take 15 as long as you need. 16 A In No. 82, there is the Haney versus Costa Del 17 Mar, this was also associated federal case and after the 18 case settled for the computation of the value of 19 injunctive relief, I performed what could be called an 20 expectation survey, and that case was related to 21 warranties. And let me just -- there was something that 22 was used that was called nominal fees for repairs. And 23 there was a second issue, the lifetime warranty versus a 24 limited lifetime warranty. And in that case I did a 25 survey of purchases of those sunglasses and assessed how</p>	<p style="text-align: right;">Page 25</p> <p>1 motorist section of the policies, what was actually 2 covered by that. There have been accidents, consumers 3 had not been paid. In that case I was retained by the 4 insurance company. And so there was a class action and 5 the question was, was there something wrong with the 6 wording in the policy. 7 Q Okay. 8 A And so in that case, counsel actually had 9 different interpretations and then I designed a survey 10 that would test the different interpretations. 11 Q Okay. In No. 22, the Metropolitan 12 Transportation case that we talked about, the 13 transportation money, did your work test a causal 14 proposition in that survey? 15 A No, it was not a causal proposition. It just 16 was a descriptive proposition to I would say measure 17 consumer sentiment. At that time it was actually the 18 Bay Area, there was all the money went into BART. And 19 so other modes of transportation were basically -- not 20 defunded but funded at a lower level. And the survey 21 was about is it worth to get a lot more cars off the 22 street by getting people to using BART at the cost of 23 potentially closing bus lines. It was along those 24 lines. 25 So it was not a cause and effect, but it was</p>

<p style="text-align: right;">Page 26</p> <p>1 assessing consumers' change in preferences and 2 perceptions about something that changed in their daily 3 routines, like, for example, a closed bus line would be 4 viewed negative by someone who doesn't use BART, for 5 example, BART gets more funding, it was along those 6 lines. 7 Q And in the Metropolitan Transportation case, 8 did you write the questions for that survey? 9 A The questions were -- there were certain legal 10 issues, because this was a discrimination case. And so 11 the legal aspects were phrased by the attorneys, but 12 then there were other more consumer perception, consumer 13 preference questions there that I -- I would say it was 14 a joint product, but I did not touch the legal issues 15 that they wanted to assess that were relevant for the 16 discrimination claims. 17 Q Probably a safe way to proceed. 18 Do you remember, was there a control group as 19 part of the survey experiment you did in the 20 Metropolitan Transportation case? 21 A The service that was done by category of 22 public transportation, let's say the mode of public 23 transportation. And the results from -- think about if 24 there were four modes I designed the system where every 25 -- every permutation of pairs that was possible. And so</p>	<p style="text-align: right;">Page 28</p> <p>1 really the goal of the exercise there. 2 Q I think I understand. Let me put it in my 3 words, and if I screw it up, tell me. But were you 4 performing a survey to test what people told you they 5 thought or how they would behave and then you were able 6 to compare those responses to a body of data to see how 7 well they matched up? 8 A That is -- I would say at the higher level 9 that is correct. The individuals have opinions about 10 their behavior, their purchase behavior, which then 11 could be tested against objective purchase data. 12 Q Okay. In the Costa Del Mar case, the one 13 involving the sunglasses, did your work there test a 14 causal proposition? 15 A I can explain what I did and then I can see if 16 there's any way of interpreting that as a causal. 17 Q Let's do that. 18 A Again, the goal was after the case had settled 19 and injunctive relief had been negotiated or ordered, 20 and what I really tested is when consumers read, for 21 example, what I recall vividly is that nominal fee, what 22 is over the lifetime of a pair of sunglasses, and these 23 sunglasses were expensive, they were like 2, \$300, what 24 would consumers view as a nominal fee. 25 I don't think that can be viewed as causal.</p>
<p style="text-align: right;">Page 27</p> <p>1 I used these permutations as built-in control groups. 2 Q In the Vons case, were you testing a causal 3 proposition there? 4 A Their proposition was causal in the sense 5 the -- I had all of the frequent shopper transactions 6 and the ones that -- like this Vons club card. And the 7 question there was does coupon -- do coupon campaigns, 8 and the wording in coupon campaigns and the redemption 9 of coupons, do they cause differences in purchase 10 behavior as measured by the transaction data that I had 11 in that case. 12 Q So let me make sure I understand. Were you 13 analyzing data that existed or were you fielding a 14 survey of consumers, or maybe both? 15 A It was both. The data themselves were 16 millions of transactions of consumer purchases. And 17 then there was the second aspect to see how consumers 18 assessed a situation I would say subjectively is 19 probably the best way. I feel that -- like a consumer 20 says, "Oh, yeah, I see this," and then it changes and we 21 had the data -- or I had access to the data and so I 22 could test statistically speaking if there was a 23 correlation between what the consumers thought about 24 those coupon campaigns, and then the data would be able 25 to show either the same or different picture. That was</p>	<p style="text-align: right;">Page 29</p> <p>1 And the warranty part of that was like this point -- or 2 the difference between lifetime warranty and limited 3 lifetime warranty, and that was really more like 4 probably in the truest sense of the word, an expectation 5 survey, what do consumers expect when they view a 6 description like that, then how do they actually view or 7 value that. 8 So I asked the questions as a percentage of 9 the purchase price in absolute dollar terms across 10 different groupings within the class and then the test 11 to come up with -- with the value of that statement -- 12 or the difference in value, I should say. 13 Q Do you recall whether any controlled group was 14 used in your work in the sunglass case? 15 A In this case, there was no control group 16 necessary because it was the purchases -- in the control 17 groups who were indirectly there that people were given 18 the questions as a dollar, as a percentage, so I created 19 built-in controls, it was looked at both, that was the 20 argument we used to compare the results. 21 Q And then finally on the Kombucha drinks, was 22 there a causal proposition being tested in that work? 23 A Again, there was the difference between the 24 way this Kombucha drink was done, but the difference 25 between the live cultures and pasteurizing something,</p>

<p style="text-align: right;">Page 30</p> <p>1 Louis Pasteur, that's his name, pasturizing something 2 and then basically after the fact including the 3 cultures. So that was really more like explaining what 4 they had purchased, the consumers, versus what they 5 thought they were purchasing and then see if there's a 6 potential difference in how much more value the original 7 recipe, so to speak, where the pasteurization process 8 takes place. 9 Q Did you write the questions yourself in the 10 survey you did in the Kombucha drink case? 11 A Yes. That was basically getting the 12 definitions of the attributes in questions and there was 13 really no -- no legal interpretation. And same as the 14 sunglass case. I just defined -- I didn't go into the 15 legal aspects of the warranties there, I just defined 16 what the -- what basically the warranty said and then 17 how the injunctive relief changed in the wording 18 contrasted back to the original wording. 19 Q And in the Kombucha case was any control group 20 used? 21 A There were only the plaintiffs, there was no 22 special control group. 23 Q In any of the survey works that we just talked 24 about, and I'll try to do it collectively, do you recall 25 using a pretest in any of these examples?</p>	<p style="text-align: right;">Page 32</p> <p>1 applications and then contacted the survey -- the 2 individuals or the respondents. 3 Q Going back to the transportation one just for 4 a second, do you recall who made the decision to 5 actually talk to people as they got off public 6 transportation as opposed to using an internet panel 7 survey? 8 A I don't recall that, how the decision was 9 made. That case is also probably at least, I don't 10 know, ten, 12 years ago. And I don't recall how the 11 decision was made. 12 Q Okay. Regardless who made the decision, and I 13 take it you agreed with the decision and the 14 circumstances? 15 A That is correct. 16 Q Talking about your expectation survey in your 17 report here, do you recall, did you do a pretest of the 18 questions in this expectation survey? 19 A Usually in surveys I use the first smaller 20 number, 50 years old, whatever comes back within day one 21 basically to -- to do some interpretation. Right now I 22 don't see the survey in front of me so I don't know if 23 we had particular questions in there. So right now I 24 don't recall. 25 Q We're talking about 15 paragraphs, 16</p>
<p style="text-align: right;">Page 31</p> <p>1 A The rollout of the first few, that number 2 varied, I don't recall exactly how large it was, but I 3 test the survey instrument, and I know the very first 4 one, that was not an internet panel survey, that was, 5 you know, from the early 2000s. 6 But they have -- the survey company who 7 conducted the survey included a pretest that I then 8 looked at, diagnosed that there was no misunderstanding 9 or confusion in that survey and didn't have to change 10 anything. 11 Q Were the rest of these examples all internet 12 panel surveys? 13 A I -- I mean, definitely the Kombucha and the 14 transportation was not an internet panel. There was 15 actually the survey company went out to interview people 16 as they were exiting particular public transportation 17 vehicles. 18 Q From what you've described to me I think that 19 makes sense in that circumstance, all the others as you 20 can recall were internet panel surveys? 21 A That is my recollection, because I know that 22 there was one that we had millions of the frequent 23 shopper cards and then we outsourced that personally. I 24 don't conduct the survey myself, the company who did the 25 survey there used information from the frequent shopper</p>	<p style="text-align: right;">Page 33</p> <p>1 paragraphs in describing it. 2 Is there anything in this -- under Section 8, 3 is there any paragraph that I could look to that would 4 describe for me any pretest that you did? 5 A Let me just find this here. See, the question 6 was in the -- and I'm on Page 69 right now on Table 17. 7 And there at the bottom it says a clear understanding of 8 the 493 versus no, the seven individuals. 9 Well, when that question was in there, then I 10 would have looked at the first 50 or so, usually 11 whatever comes in after the first day and look at those 12 answers and then made the decision that the percentage 13 is so small that no changes are necessary. 14 Q Did you write the questions for your 15 expectation survey in these cases? 16 A Yes. I mean, I worked with the team and we 17 looked at the statements themselves and then I decided 18 how to phrase the intro to the question. And then also 19 how to basically get the answer choices. Because in 20 this case, I did not go through all possible 21 permutations, I basically focused on some of them to 22 show a trend or to test if a trend exists. And so the 23 different categories basically I put together after 24 discussions with the team. 25 Q And who else was on the team?</p>

<p style="text-align: right;">Page 34</p> <p>1 A In this particular instance there was a</p> <p>2 Dr. Groehn, G-R-O-E-H-N, he's a director in BRG's D.C.</p> <p>3 office, and then there's also Mia Kim, she's at the</p> <p>4 consultant level and is in the Los Angeles office.</p> <p>5 Q Anyone else?</p> <p>6 A I think that those two individuals were the</p> <p>7 ones that I recall. I don't know, maybe pulling</p> <p>8 together the tables or so may have been a more junior</p> <p>9 level staff person, but I do remember having discussions</p> <p>10 with those three individuals.</p> <p>11 Q And what did Dr. Groehn do, what was his role</p> <p>12 or her role?</p> <p>13 A He's male. He basically had worked with me on</p> <p>14 this case, he also had worked on the Minnesota case.</p> <p>15 And so we would discuss the framing of the original</p> <p>16 question that you see at the top of the figures on Pages</p> <p>17 70 and following. And then we looked at the phrasing of</p> <p>18 the expectations themselves.</p> <p>19 So that was his role, he and I had discussions</p> <p>20 and we would put it down.</p> <p>21 Q And then Mr. or Ms. Kim, what was that</p> <p>22 person's role?</p> <p>23 A Ms. Kim was more junior, was part of the</p> <p>24 discussions then probably wrote it down in the document</p> <p>25 that I reviewed.</p>	<p style="text-align: right;">Page 36</p> <p>1 A Yeah, that's what it says.</p> <p>2 Q Okay. What's the significance of the</p> <p>3 84.2 percent number?</p> <p>4 MS. BORRELLI: Object to form.</p> <p>5 (Reporter clarification.)</p> <p>6 THE WITNESS: The question was what is the</p> <p>7 significance of the number, Mr. Shackelford?</p> <p>8 Q BY MR. SHACKELFORD: Yes.</p> <p>9 A The significance of the number is that the</p> <p>10 large majority of respondents expect fresh ingredients,</p> <p>11 only fresh ingredients when it's stated on the package.</p> <p>12 Q Okay.</p> <p>13 A So that's a source that with a statement comes</p> <p>14 an expectation of the consumer who's buying that</p> <p>15 product.</p> <p>16 Q What percent of respondents would agree that</p> <p>17 the dog food had only fresh ingredients without being</p> <p>18 exposed to the fresh statement?</p> <p>19 A This particular question was asked with</p> <p>20 respect to the fresh statement. So I did not test -- I</p> <p>21 did not separately test what the number of consumers is</p> <p>22 who expect that without having seen the statement. This</p> <p>23 was really a test devised to specifically look at the</p> <p>24 statement itself and not compare it to a group that</p> <p>25 would not see the statement.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q Was any control group used in the expectation</p> <p>2 survey in your report in the Illinois case?</p> <p>3 A I mean, there was no control group necessary</p> <p>4 because the participants were all individuals in the</p> <p>5 market for dog foods, premium dog foods and therefore,</p> <p>6 they saw all the same questions.</p> <p>7 THE REPORTER: Counsel, I'm sorry. Could we</p> <p>8 just take a two-minute break?</p> <p>9 MR. SHACKELFORD: Absolutely.</p> <p>10 THE VIDEOGRAPHER: We are off the record. The</p> <p>11 time is 1:16 p.m.</p> <p>12 (A brief recess was taken.)</p> <p>13 THE VIDEOGRAPHER: We are back on the record.</p> <p>14 The time is 1:22 p.m.</p> <p>15 Q BY MR. SHACKELFORD: Mr. Boedeker, would you</p> <p>16 find Paragraph 179 in your report, it's on Page 70 here</p> <p>17 in the expectation survey, and just let me know when you</p> <p>18 found that?</p> <p>19 A I'm right there.</p> <p>20 Q Okay. Great.</p> <p>21 And your report here in this paragraph said,</p> <p>22 "84.2 percent of respondents either agree or strongly</p> <p>23 agree that the advertised dog food does only contain</p> <p>24 fresh ingredients unless otherwise specified"; is that</p> <p>25 right?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Based on what you told me, do you have an</p> <p>2 opinion from your survey whether the people who would</p> <p>3 expect the dog food to contain fresh ingredients who had</p> <p>4 not seen the statement, would that number be more than</p> <p>5 84.2 percent, less than 84.2 percent, exactly</p> <p>6 84.2 percent or the survey doesn't allow you to form an</p> <p>7 opinion?</p> <p>8 A That's a good question. Let me ponder that</p> <p>9 for a second. Because here I asked with reference to a</p> <p>10 statement that the participants saw an 84.2 percent</p> <p>11 answer. And right now I could not tell you the</p> <p>12 magnitude of that group, if it's the same respondents</p> <p>13 that would have made that statement about fresh</p> <p>14 regardless of having seen it.</p> <p>15 So the answer cannot be given based on the</p> <p>16 data that I have.</p> <p>17 Q Okay.</p> <p>18 A I mean, anything else would be speculation.</p> <p>19 And of course people can speculate, but I refrain from</p> <p>20 that in the deposition.</p> <p>21 Q Okay. I think we can do this quickly. The</p> <p>22 same would be true with respect to regional, you didn't</p> <p>23 ask them the question without reference to regional and</p> <p>24 then compare that to the answer by showing them</p> <p>25 regional?</p>

<p style="text-align: right;">Page 38</p> <p>1 A That is correct. The design of the subsequent 2 questions is always with reference to a particular 3 statement or a particular omission, but they're not 4 comparing that to something without pointing out the 5 statement itself. 6 Q Okay. And so then the same is true for 7 biologically appropriate, "Nourish as nature intended"; 8 correct? 9 A That is correct. 10 Q Okay. 11 THE REPORTER: So, Mr. Shackelford, we have 12 lost your visual. 13 MR. SHACKELFORD: I beg your pardon. I'm 14 shuffling papers, I turned myself off. 15 Q BY MR. SHACKELFORD: In Paragraph 177. 16 A Okay. 17 Q You say the "Respondents were randomly 18 assigned to the Orijen and Acana study." 19 Does that mean that there were approximately 20 250 respondents in each? 21 A Yes. The randomization that was done for each 22 incoming for the respondent, there was a 50-50 chance 23 that they were called one way. And I could look, I 24 mean, if you flip a coin a certain number of times, I'd 25 say 500 times, it may be that one comes up 247 and one</p>	<p style="text-align: right;">Page 40</p> <p>1 deemed it unnecessary that control groups would be 2 needed, simply for the fact that I wanted to look at 3 purchases in the market, how they viewed this. And as 4 long as that number is -- let's say highly positive, I 5 think here's an example of 85 percent, it was not 6 necessary to know what people expect otherwise. 7 Q Of the -- let's look at Table 17 if we could, 8 and that's on Page 69. 9 A Okay. I'm right there. 10 Q Okay. From this are you able to tell me, and 11 if it's not here but it's someplace else, that's fine, 12 I'll take that as an answer, but are you able to tell me 13 how many people of the 500 respondents summarized in 14 Table 17, how many of them had purchased an Acana 15 product? 16 A It is not in this table, so I would have to 17 dig into the underlying data to see what the information 18 is, but it's not reported in this table. 19 Q Would the same be true for Orijen? 20 A Yeah, that's correct. Same answer. 21 Q And does the -- Table 17 doesn't tell us how 22 many of the respondents were from Illinois or any other 23 state, does it? 24 A That is correct. The expectation survey was 25 done across the states or the -- in the three reports,</p>
<p style="text-align: right;">Page 39</p> <p>1 comes up 253. 2 Q And that's why I said approximately. The big 3 thing I wanted to make sure I understood is that the 4 number of respondents to each survey is not 500, it's 5 approximately half that number; correct? 6 A That is correct. And I don't think the -- I'm 7 looking at Table 17, I just break it down by the 8 demographic questions, but overall the sample size was 9 500. 10 (Reporter clarification.) 11 Q BY MR. SHACKELFORD: If it was 253, 247, 12 sounds like not a big deal, it's a statistical anomaly 13 of assigning people at random; is that right? 14 A And it's not a statistical anomaly, it's just 15 the statistical nature of -- 16 Q How it worked out? 17 A I had to say that. 18 Q And I deserved it in fairness. 19 Do you recall any discussion with the team 20 that you identified for me earlier whether it would be 21 appropriate to use a control group with your expectation 22 survey? 23 A There were discussions and then I basically -- 24 based on the -- let's put it this way, based on the 25 scope of what the survey was supposed to measure, I</p>	<p style="text-align: right;">Page 41</p> <p>1 this particular survey was not conducted separately in 2 all three states, it was conducted once and then posted 3 as information. So they were all -- I would say the 4 respondents could come from a diverse background, right, 5 that's not only focused on Illinois or New York or 6 Michigan. 7 Q Do you know if any or all of those three 8 states were overweighted in the survey respondents? 9 A You mean the expectation survey? 10 Q Yes, sir. 11 A I would have to check that. To the best of my 12 recollection, it was not. There were no quotas, but I 13 could check that, it's not in the table here, 14 unfortunately. 15 Q Okay. But make sure I'm clear. If I wanted 16 to know the answer to the question of the 500 17 respondents to your expectation survey, if I wanted to 18 know how many of the respondents lived in Illinois and 19 bought an Acana product, those numbers are in the backup 20 data, fair? 21 A Yes, there should be a spreadsheet in there 22 that has -- basically the columns are all the questions 23 and the rows are the respondents. And then we just have 24 to find the intersection point with the column that 25 designates state, for example, with the particular</p>

<p style="text-align: right;">Page 42</p> <p>1 individual. And then that way one would be able to 2 identify the individualized information. It's not 3 summarized in Table 17. 4 Q Got it. And do you recall -- and if need be 5 we can dig up the appendix, I don't think it'll be 6 necessary, but by all means if you want to look at it 7 we'll take the time to pull it up, but do you recall the 8 questions in the expectations survey by and large were 9 phrased as agree or disagree-type questions? 10 A There were -- some of them -- five scale, a 11 five-point scale, there was agree, strongly agree and 12 then down to strongly disagree. And the other one were 13 in terms of far more likely, more likely, neutral in the 14 sense, either/or and then less likely, much less likely. 15 But there was always a five-point scale used. 16 And one of them for particular questions used the degree 17 -- or strongly agree to strongly disagree scale. 18 Q And if I understand, Paragraph 179 of your 19 report, that's basically what you're telling me with 20 respect to the range of options on agree, disagree; is 21 that fair? 22 A That is correct. So that's in the table, I 23 mean, it's very small, but the very dark one would be 24 the strongly agreed and then you'd go to the right from 25 there.</p>	<p style="text-align: right;">Page 44</p> <p>1 in some degree of specificity. 2 The Reference Guide on Survey Research by 3 Shari Diamond, Third Edition, 2011, that's the chapter 4 that you were talking about that Shari Diamond wrote; 5 correct? 6 A Yeah, that sounds familiar. 7 Q Okay. And this is within the reference manual 8 on scientific evidence, it's one of the particular 9 chapters that begins in the third addition on Page 359. 10 I'm looking at a section -- passage -- it really begins 11 at 391 under the heading "Did the Survey Use Open-Ended 12 or Closed-Ended Questions, Was the Choice in Each 13 Instance Justified?" 14 So that's for orientation, I'm going to move 15 ahead a few pages and I'm just going to read you from 16 near the top of Page 394. And again, I appreciate you 17 don't have it with you, but I'll read the content, set 18 the framework and then ask the question. So here's what 19 Professor Diamond has to say, "One form of closed-ended 20 question format that typically produces some distortion 21 is the popular agree/disagree, true/false or yes/no 22 question. Although this format is appealing because it 23 is easy to write and score these questions and their 24 responses, the format is also seriously problematic. 25 With its simplicity comes acquiescence," and then</p>
<p style="text-align: right;">Page 43</p> <p>1 Q Is the range of options from strongly disagree 2 to strongly agree, is that an open-ended or a 3 close-ended-type question? 4 A This is a question that would be considered 5 closed end, because the answer choices are given. An 6 open-ended version here would just be what do you think 7 about the following statement and then the person could 8 write down their answer. 9 That's typically the difference between open- 10 and close-ended questions. The five-point scale is used 11 in a very large number of consumer surveys. And so I 12 adopted that for this survey. 13 Q And I know elsewhere that you've cited 14 Shari Diamond's work on survey methodology elsewhere in 15 the report. 16 Do you recall that? 17 A Yes. And she's probably in here with her 18 work. That's also in the scientific manual of evidence. 19 Q Are you familiar with her commentary on the 20 type of close-ended agree/disagree questions and their 21 propriety for use in surveys that don't have a control 22 group? 23 A At the moment I don't recall that exact cite. 24 Q Okay. I am looking at -- I appreciate you'll 25 have to take my word for it, so I'm going to identify it</p>	<p style="text-align: right;">Page 45</p> <p>1 there's a quote, "'The tendency to endorse any assertion 2 made in a question regardless of its content,' is a 3 systematic source of bias that has produced an inflation 4 effect of ten percent across a number of studies. Only 5 when control groups or control questions are added to 6 the survey design can this question format provide 7 reasonable response estimates." 8 That's the end of the statement. 9 Do you recall taking that commentary into 10 account when you were writing the expectation survey? 11 MS. BORRELLI: Objection to the extent that 12 Mr. Boedeker does not have that text in front of him and 13 you've not entered it as an exhibit. 14 MR. SHACKELFORD: I'm happy to mark it and 15 have a copy entered as an exhibit. And I don't know 16 that it would help for purposes of today. 17 MS. BORRELLI: Yeah. He can go ahead and 18 answer the question. 19 MR. SHACKELFORD: Sure. 20 THE WITNESS: My reason for not being able to 21 give an answer is that I would have to see it in context 22 and I'm willing to give that answer once I get the depo 23 transcript back, but right now, as you said, there's 24 many, many pages missing between the chapter heading and 25 then what you read. And again, there's so many</p>

<p style="text-align: right;">Page 46</p> <p>1 different surveys in trademark infringement service 2 where the exact wording matters very much. Different 3 things are of the essence. 4 And again, I don't know the studies that 5 Shari Diamond or Professor Diamond refers to where 6 ten percent of distortion has been observed. Here I'm 7 simply describing the results, and the results are what 8 they are. And in that simple scale I do not see how 9 people would give a wrong, incorrect or distorting 10 answer because they were told just tell me what you 11 think and when you think you strongly agree with the 12 statement then they strongly agree. 13 I don't see a distortion here because these 14 survey answers are not used for predictive or projection 15 purposes, but otherwise I would really need to read that 16 particular section of the Diamond chapter in the 17 reference manual to give a more informed answer. This 18 was just very high level here. 19 Q I think we're still on the same page of the 20 report there, Page 70, Figure 12, let me know when you 21 have that in front of you. 22 I think I can do them all at once. What I'm 23 interested in is the printed information to the left of 24 the four bars. 25 A Okay. I see it.</p>	<p style="text-align: right;">Page 48</p> <p>1 I was trying to get at? 2 A My team and I came up with that, we obviously 3 shared the resulting survey with the attorneys before we 4 launched it. 5 Q Okay. That is what I was interested in. 6 In the expectation survey, did you use any 7 decoy statements? 8 A No, I don't think in this one there were any 9 decoy statements, I'm just going through here. 10 Q Oh, sorry. You answered the que -- I thought 11 you were looking through again, beg your pardon. 12 A Oh, I thought there was no question pending. 13 Sorry. 14 Q I thought you were looking through to make 15 sure, but the last question was were there any decoy 16 statements in this section and I think your answer was 17 no; is that right? 18 A That's correct, yeah. 19 Q Okay. You use the expression "Is formulated 20 what dogs would eat in the wild." 21 Can you explain to me how that relates to 22 fresh? 23 A Yeah, in the wild there's no -- no 24 conservation process in the wild. Dogs eat fresh food. 25 And so that's kind of like a simple explanation there.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q Okay. And so the first one -- just to orient 2 us, the first one reads, "Contains only fresh 3 ingredients unless specifically stated otherwise on the 4 packaging," and then there are three more. 5 My question is this: Who wrote the words in 6 each of those expressions? 7 A They are paraphrasing information from the 8 product descriptions. So that's kind of what I simply 9 in -- paraphrased. It's not verbatim what's out there, 10 but it's close to what people would have viewed on the 11 screens before when they were shown the products. 12 Q Okay. I think I understand that. 13 What I was trying to get at is that were these 14 your words -- they're not direct quotes from the 15 package, we know that; right? 16 A They're not direct quotes. For example, the 17 wording "unless otherwise stated on the packaging," 18 those are like labels that are put in there. If it says 19 on the package that it's fresh, but there may be some 20 not fresh ingredients in there, then that's what I 21 wanted to capture with this first example you picked. 22 Q And what I really was trying to get at is to 23 make sure whether those expressions were things that 24 your team came up with from the package or whether they 25 were written by the lawyers or someone else, that's what</p>	<p style="text-align: right;">Page 49</p> <p>1 Q Figure 13, the expressions there to the left 2 of the bars, are those also things that you and your 3 team came up with as ways of paraphrasing information on 4 the package? 5 A That is correct. I mean, that is pretty much 6 the use of the figures, it's kind of a sentence or so 7 that is derived from knowledge about the product in 8 general to the work I've done on this case and in the 9 past on these kind of cases. 10 Q And then the expression there in Figure 13, 11 "Does not contain any grains," how does that relate to 12 regional? 13 A Maybe when I said that there are no decoys in 14 there, this could have been some decoy like that. And 15 so from that end it's -- there doesn't have to be a 16 direct relation to regional. 17 Q Would it be accurate to say then that the 18 grains was included as a decoy? 19 A It's possible. I don't recall the decision 20 about that particular descriptor on the left side, if we 21 wanted to consciously improve a decoy or not. 22 Q The expression in Figure 14, you've told me 23 that basically extrapolated all of these or paraphrased 24 from contents on the bags, but I'm interested in the 25 one -- the very last one, "Has high palatability."</p>

<p style="text-align: right;">Page 50</p> <p>1 Was that used as a decoy statement in this 2 portion of the survey?</p> <p>3 A Again, I don't recall making a conscious 4 decision to include that as a decoy, but high 5 palatability was one of the -- the piece of information 6 that was actually on -- I don't know which exact box it 7 was on, but that's something that I had read in the 8 course of the work on this case.</p> <p>9 Q Sure. When you and your team put together the 10 statements, did you ever look for ways to rewrite the 11 questions to avoid using "not"? In other words, more 12 affirmative statements as opposed to negating 13 statements?</p> <p>14 A In this particular instance, when testing the 15 effect of omissions, I think the "not" is the only way 16 of phrasing it properly. I don't think that that causes 17 confusion or bias when I'm showing biologically 18 appropriate. It wouldn't make a lot of sense in my 19 opinion to ask do you expect that the product 20 biologically appropriate contains a chemical or heavy 21 metals, for example.</p> <p>22 So therefore, I wanted to figure out when 23 something positive is stated what do consumers expect to 24 get or not get. And in this case, the question was do 25 they expect anything negative when they buy biologically</p>	<p style="text-align: right;">Page 52</p> <p>1 just those five things and then they put in -- going to 2 the scale, the one to five scale and click the one they 3 most agreed with.</p> <p>4 Q But if you flipped it and said, "For 5 biologically appropriate statements, I would expect that 6 the dog food shown contains heavy metals," then you 7 don't have a "not" and you'd just be flipping it; right?</p> <p>8 A Then -- yeah, if the question is biologically 9 appropriate, I would expect that and then a consumer 10 would read that. Since I haven't asked the question 11 that way by looking at these results what they expect to 12 not find, I would expect -- sorry -- a lot of expect in 13 this context, but I would expect that a lot of people 14 would say, "No, I strongly agree with that statement." 15 And I can infer that from having that "not" at 16 the descriptor level that the strongly agree is very 17 large, it's 50 -- no, 44.9 percent in the first bar. 18 And so knowing that 44.9 percent and then 38.9 percent 19 agree or strongly agree do not have heavy metals. If 20 the question had been phrased along the lines that you 21 suggested that there's no "not" in there, then asking 22 the same participants I would expect to have not more 23 than 50 percent or so saying that they do expect heavy 24 metal in there.</p> <p>25 Q And the reason I ask the question is simply</p>
<p style="text-align: right;">Page 51</p> <p>1 appropriate labeled product.</p> <p>2 Q Hypothetically you could have written it, it 3 said -- on the omissions you could say, "The dog food 4 shown contains heavy metals," and then test whether they 5 agreed or disagreed with that statement; right?</p> <p>6 A Yeah, what is the question there? I know what 7 your question is, but what is the question that you're 8 trying to present to the -- to the participant? I don't 9 see that what you phrased is a question to the 10 participant.</p> <p>11 Q But you're putting it in the form of a 12 statement and then asking them whether they agree or 13 disagree, that's really the question; right?</p> <p>14 A Let me ponder that. I mean, I would think if 15 I had this -- I take Figure 14 as an example. And then 16 the question -- I could have put that "not" in the 17 overarching question, like when I'm seeing biologically 18 appropriate I do not expect that the dog food shown 19 would, and then everything else would be positive.</p> <p>20 There's one point where the "not" has to be 21 put in there. And so I put it in the descriptors to the 22 left of the box. And that's kind of like when the 23 survey was presented on the screen there would be the 24 overarching question. And again, there were no bars 25 with percentages yet. What the participants saw was</p>	<p style="text-align: right;">Page 53</p> <p>1 you're familiar with academic literature that critiqued 2 negative statements as being fatiguing and burdensome to 3 respondents?</p> <p>4 A I mean, there are studies out there when every 5 single question and every single choice is like that, 6 but here since it's such a short survey with just a 7 handful of questions, and then I think the reader of 8 such a question "biologically appropriate" again is 9 viewed by and large as positive, then asking if they 10 expect something negative in there I don't think leads 11 to confusions one way or the other.</p> <p>12 If you're asking, "Do you expect there's a 13 positive statement, a positive attribute and then do you 14 expect something negative or do you not expect something 15 negative?"</p> <p>16 I don't think the confusion in more 17 complicated surveys of the like that you cited from 18 literature about is not applicable here. I think the 19 questions are very clear and very simple. And I don't 20 think there's any worry about that confusion.</p> <p>21 Q Okay. And you didn't field any sort of draft 22 or pretests where you took out the negative statements, 23 phrased them positively so that we could compare if 24 there was a difference in the responses between the two 25 types; correct?</p>

<p style="text-align: right;">Page 54</p> <p>1 A No. The only question I asked, "Did you 2 understand what you were asked in those questions?" 3 And since that number was very, very small 4 expressing non-understanding, I didn't feel the need to 5 change that. 6 Q Okay. And the expectation survey as we're 7 looking at screenshots, and again, if we need to pull 8 the appendix we can, but they were shown as suggestion 9 of the prices of the products when they were asked to 10 look at the bag; right? 11 A In the expectation survey in the -- in the 12 introduction of the survey, I believe there was a -- a 13 situation was set. 14 Q It didn't necessarily purport to be an actual 15 price, but it was a frame of reference for the price, is 16 that a fair characterization? 17 A It was definitely a frame of reference, which 18 does not say that that price is not the price of the 19 actual product. But I viewed it more as a frame of 20 reference. 21 Q Okay. And would you agree that when you 22 provide that frame of reference, it by itself can create 23 certain expectations about the product on the part of 24 people answering the questions that come after? 25 A I mean, the expectation by showing a price</p>	<p style="text-align: right;">Page 56</p> <p>1 immediately the person who looks at it and says, "Rolex, 2 \$50," they think it's a knockoff, even if you're not 3 talking about knockoff products, there's some 4 supposition or beliefs just by virtue of communicating 5 that information that may seep in even if you're not 6 asking questions about that; isn't that true? 7 MS. BORRELLI: Object to form. 8 THE WITNESS: That's really more like in 9 measuring behavioral changes. And again, as a 10 statistician and economist I -- I can analyze data, but 11 I would not draw conclusions on that. 12 But I cannot rule out that somebody seeing a 13 Rolex and a \$50 price even close to it, that that frame 14 of reference make them think it's a knockoff. I can't 15 rule that out, but I didn't study that in particular. 16 Q BY MR. SHACKELFORD: And are you able to tell 17 me -- the price point you chose was \$114.99, do you know 18 how you settled on that price? 19 A I don't recall that. It must have -- if you 20 can tell me -- I don't look at that document, but 21 whatever the bag size is and the product and then I 22 picked the price that was relatable. 23 Q Okay. As the questions came up and the way 24 the survey was fielded, were the responses in each 25 prompt randomized or did they come up the same way each</p>
<p style="text-align: right;">Page 55</p> <p>1 there -- it's not \$150 or \$25. It's a price that would 2 be representative of prices of Acana or Orijen, 3 depending on where somebody was assigned would see. And 4 so by buying premium dog food, of course consumers have 5 expectations. 6 Q And then similarly, just hypothetically, if 7 you showed an image of a Rolex watch and it had the 8 Rolex image on it, but you said, "Here's a watch offered 9 for purchase for \$50," those two pieces of information 10 may have some impact on what the respondents think about 11 that product before any other questions are asked, 12 wouldn't you agree? 13 MS. BORRELLI: Object to form. 14 THE WITNESS: If the differences are as 15 extreme as you said, the Rolex and then you talk about a 16 \$50 watch or the Ferrari and you're talking about a 17 \$12,000 vehicle, it may be. But that's why the prices I 18 chose that were shown, the frame of reference was really 19 a frame of reference to the product that was -- that the 20 respondents were asked questions about. 21 If I take your Rolex example, and I don't know 22 how much a Rolex costs, let's say \$20,000, then that is 23 not the proper frame of reference if your survey is 24 about \$50 watches. 25 Q BY MR. SHACKELFORD: On the other hand,</p>	<p style="text-align: right;">Page 57</p> <p>1 time? 2 A The -- the questions themselves or do you mean 3 the five-point scale? 4 Q No, not the five-point scale, but, for 5 example, in Figure 13 you've got three different 6 agree/disagree statements there. 7 Were those randomized or did they come up in 8 the same order every time? 9 A They were randomized. 10 Q Okay. Do you know how the randomization was 11 done? 12 A It's basically a simple algorithm that the 13 vendor uses. Say we have three and then there's a 14 certain number of how you can organize three in order. 15 So if you had one, two, three, one, three, two, two, 16 three, one, three, one, two and three, two, one. And 17 then each one of those would get an equal likelihood 18 assigned. 19 And then when respondent now clicks on an 20 expression, then out of the possible permutations one 21 would select it as a uniform probability. So that in 22 the long run, I mean, in the first five you don't see an 23 exact uniform distribution, but as you are proceeding 24 with the survey you'll see a convergence of the 25 different permutations that respondents see towards the</p>

<p style="text-align: right;">Page 58</p> <p>1 uniformly distribute order.</p> <p>2 Q And so like in Figure 14 where we've got five</p> <p>3 different agree/disagree statements, those would also</p> <p>4 have been randomized in the same way you've described</p> <p>5 according to an algorithm?</p> <p>6 A That is correct.</p> <p>7 Q Are those instructions set forth someplace in</p> <p>8 your agreement with the survey company to make sure that</p> <p>9 they randomized the -- randomized the options?</p> <p>10 A I would have to see, that's typically done in</p> <p>11 discussions with the vendor after what I call the</p> <p>12 preprogramming survey instrument has been sent to them.</p> <p>13 Because what I do is I put the survey together</p> <p>14 and typically in what I call the preprogramming survey</p> <p>15 it has little bracketed instructions to the programmer.</p> <p>16 And it would be as simple as if somebody never bought</p> <p>17 dog food or they terminated it, and then it would go all</p> <p>18 the way down to questions like this, it could be select</p> <p>19 all that apply or in this case it would be randomize the</p> <p>20 answer choices.</p> <p>21 Q And within the body of information you've</p> <p>22 given us are those instructions to the vendor included</p> <p>23 someplace?</p> <p>24 A I would have to check if the -- I know we</p> <p>25 provided the screenshots, but right now off the top of</p>	<p style="text-align: right;">Page 60</p> <p>1 other, the respondent here doesn't have to say the first</p> <p>2 part is the best and the last part is the worst. In</p> <p>3 those instances where the order or the questions had a</p> <p>4 certain logical order between better or worse,</p> <p>5 definitely to avoid auto bias -- avoid auto bias that</p> <p>6 has to be done.</p> <p>7 Here one would make the argument that since</p> <p>8 they're discreet questions following from the general</p> <p>9 question that the order may not matter. But again, I</p> <p>10 have not tested that and I went the route to randomize.</p> <p>11 Q The range of options from strongly agree to</p> <p>12 strongly disagree, was that order ever changed so that</p> <p>13 you went from strongly agree to less agreement for some</p> <p>14 and then the opposite direction for other respondents?</p> <p>15 A In this case, there was the order always went</p> <p>16 from -- from the disagree, strongly disagree all the way</p> <p>17 to agree, strongly agree. And there's one category</p> <p>18 there, the don't know or unsure, that was always last.</p> <p>19 So the order was not changed from highest to lowest or</p> <p>20 lowest to highest.</p> <p>21 Q Okay.</p> <p>22 MR. SHACKELFORD: I'm about to change topics</p> <p>23 and gears, so this would be a really opportune time for</p> <p>24 a break if anyone would like to take five.</p> <p>25 THE WITNESS: Okay.</p>
<p style="text-align: right;">Page 59</p> <p>1 my head I -- I don't recall if this survey -- the first</p> <p>2 survey instrument that goes to the vendor, if that was</p> <p>3 in there.</p> <p>4 Q You would agree with me it would be best</p> <p>5 practice to rotate the options?</p> <p>6 A In general, when opinions are asked, give you</p> <p>7 an example of rotating instructions wouldn't make sense</p> <p>8 if you asked which state do you live in. And I know</p> <p>9 right now I live in Nevada, but if somebody randomized</p> <p>10 the states and doesn't leave them in alphabetical order,</p> <p>11 that would be more confusing. Simple yes/no questions,</p> <p>12 you can put them on the same line, yes/no, and then</p> <p>13 sometimes put the no first or the yes.</p> <p>14 I mean, in listings, for example, other or</p> <p>15 don't know, not sure, I typically put at the end and</p> <p>16 other ones are then randomized. So there's certainly</p> <p>17 exceptions to it, but in general, randomizing is</p> <p>18 important.</p> <p>19 Q And so just limiting our question here, for</p> <p>20 example, in Figure 14 to the five options there, best</p> <p>21 practice would have those randomized so that respondents</p> <p>22 didn't all see them in exactly the same order?</p> <p>23 A In this case that was done. So from that --</p> <p>24 and it's following best practices. I can make a point</p> <p>25 in this case because you're not choosing one or the</p>	<p style="text-align: right;">Page 61</p> <p>1 MS. BORRELLI: Yep.</p> <p>2 MR. SHACKELFORD: Super. Let's do that.</p> <p>3 THE VIDEOGRAPHER: We are off the record. The</p> <p>4 time is 2:10 p.m.</p> <p>5 (A brief recess was taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on the record.</p> <p>7 The time is 2:23 p.m.</p> <p>8 Q BY MR. SHACKELFORD: Okay. Mr. Boedeker, I</p> <p>9 indicated I wanted to shift gears a little bit and</p> <p>10 that's really what I want to do is move from the</p> <p>11 expectation survey to the conjoint.</p> <p>12 And again, we've talked about those at some</p> <p>13 length and I don't want to go through the whole 50, 60</p> <p>14 pages of stuff on that, so in all likelihood I'll be</p> <p>15 jumping around different things and stuff, but again,</p> <p>16 try to avoid replowing stuff and hit some things that</p> <p>17 are new.</p> <p>18 And this is less about Paragraph 149, but just</p> <p>19 to use it as a reference point, so it might be helpful</p> <p>20 to have that in front of you.</p> <p>21 A Which one am I looking for?</p> <p>22 Q It's at Page 55.</p> <p>23 A Sorry. Somehow the papers got mixed up.</p> <p>24 I got it.</p> <p>25 Q Okay. And again, it's just a frame of</p>

<p style="text-align: right;">Page 62</p> <p>1 reference because my question is, were all four of the 2 conjoint surveys scaled at the time?</p> <p>3 A The four conjoint surveys, I don't recall 4 right now if they were all done at the exact same time, 5 but there may have been some timing difference.</p> <p>6 Q Okay.</p> <p>7 A And I'm just looking here at the date in 149, 8 that doesn't look correct. So I have to double-check 9 that, I just noticed that. September, October 2020 10 would have been too early for these three states. So I 11 have to check that date.</p> <p>12 Q Okay. When you get the transcript if you need 13 to make a correction by all means just let us know. 14 Because it's important but not earth changing.</p> <p>15 A I will certainly do that.</p> <p>16 Q Okay. Was the expectation survey fielded 17 during that same time -- well, since we're not sure that 18 that time reference is right, let me ask the question a 19 different way.</p> <p>20 Was the expectation survey fielded at the same 21 time as the four conjoint surveys?</p> <p>22 A The expectation survey I think as I testified 23 earlier was done once and then used in the three reports 24 that we're talking in this deposition here about today. 25 And it was definitely done -- not in September, October</p>	<p style="text-align: right;">Page 64</p> <p>1 proportional.</p> <p>2 Q Illinois and Michigan, did the group of 3 respondents in those two surveys overlap at all?</p> <p>4 A For the other states there was an overlap, but 5 again, that was randomly selected who would be taken to 6 make it proportional. And then the subject states let's 7 call it that as being subject of the particular lawsuit 8 were then getting that larger sample size.</p> <p>9 Q Okay. So we get two groups of respondents, 10 I'm going to call them Illinois survey, Michigan survey, 11 but I mean to include not people from those states but 12 the entire group.</p> <p>13 Are you with me?</p> <p>14 A Yeah. Understood.</p> <p>15 Q Okay. Were the Illinois citizens in the 16 Michigan survey included in the Illinois survey?</p> <p>17 A Out of the overall size Illinois -- in the 18 Michigan survey, for example, would have been scaled 19 down to be proportional compared to the other 20 non-states. By non-states I mean the one -- not 21 Michigan. So -- and they would have been randomly 22 selected out of the pool of Illinois individuals that I 23 had.</p> <p>24 Q Was there some reason not to include all of 25 the Illinois residents from one panel from both surveys</p>
<p style="text-align: right;">Page 63</p> <p>1 2020, it was definitely done in 2021, but I don't recall 2 the correct or exact dates.</p> <p>3 Q Is it accurate that the Orijen 4 misrepresentation survey that you did in Minnesota was 5 different from the Orijen misrepresentation that you did 6 for Illinois and Michigan?</p> <p>7 A There was a change in one of the attributes, 8 but that would be the only difference.</p> <p>9 Q And why was the change made?</p> <p>10 A That was done -- I was asked to test that 11 statement, I believe it was the lone temperature with 12 the description of the dried meats and seafood. That 13 was different in -- in this survey than compared to the 14 Minnesota one.</p> <p>15 Q Okay. The group of respondents for -- and 16 let's leave New York to one side for a minute and talk 17 about Illinois and Michigan.</p> <p>18 The group of respondents whose responses you 19 use in your survey were different between those two 20 reports; is that right?</p> <p>21 A They were different for the states that the 22 particular survey was situated. So I increased the 23 sample size there. And then I randomly drew respondents 24 from the larger pool of the non-states, so to speak, so 25 there would be a representation of the states</p>	<p style="text-align: right;">Page 65</p> <p>1 in the Illinois survey report?</p> <p>2 A The Illinois -- I've got to be careful, the 3 Illinois report would have included the Illinois from -- 4 from the Minnesota survey, let's say. Then I would beef 5 up the particular state of interest to 167. And I 6 explained based on Orme why the 167 is the appropriate 7 sample size, it's a function of the -- the survey 8 design. And then everything else was then 9 proportionally to the size of the state included as 10 well. And that's why the sample sizes vary between the 11 different states.</p> <p>12 Q Okay. Were the -- were any of the 167 13 Illinois respondents, were their responses included in 14 either the Michigan or New York survey?</p> <p>15 A Again, that was based on the randomization, 16 but whatever was used from Illinois proportionate to the 17 size of the non-states, New York, for example, then 18 Illinois' participants were randomly selected from the 19 pool of Illinois participants that I had.</p> <p>20 Q Let me say it my way and then make sure I get 21 it right.</p> <p>22 Of the 167 Illinois respondents, a number was 23 chosen at random to be included, for example, in 24 Michigan so that you had a representative share of 25 Illinois people as a non-state, non-focused state of the</p>

<p style="text-align: right;">Page 66</p> <p>1 Michigan report, would that be accurate?</p> <p>2 A It would be slightly different because the</p> <p>3 number was not chosen randomly. The number was</p> <p>4 calculated to make it proportionally representative.</p> <p>5 But then let's say it was -- let's pick a number here,</p> <p>6 30, those 30 were randomly selected of the existing</p> <p>7 Illinois pool.</p> <p>8 Q Okay. And that's what I understood, you</p> <p>9 needed to hit a number and in order to hit the number,</p> <p>10 you picked from 167 from Illinois at random in order to</p> <p>11 get the number that you needed to make a proportional</p> <p>12 representation in the non-Illinois reports?</p> <p>13 A That is correct, the number was calculated,</p> <p>14 but then the selection of that number from a broader</p> <p>15 pool was done on the random basis.</p> <p>16 Q Got it. Did you do any testing to see whether</p> <p>17 there was any sensitivity attached to which of the</p> <p>18 Illinois residents were used for the other surveys?</p> <p>19 A I did not draw multiple samples because that</p> <p>20 would have meant to do the survey itself multiple times.</p> <p>21 But ultimately what I compared were across the surveys</p> <p>22 part-worth for the Illinois in the other different</p> <p>23 subgroups or at focus state reports.</p> <p>24 Q Okay.</p> <p>25 A Or we look at -- the bigger pool in Illinois</p>	<p style="text-align: right;">Page 68</p> <p>1 Q You asked -- in some of the survey questions</p> <p>2 you asked whether the respondents had purchased either</p> <p>3 Acana or Orijen at any point since January 1, 2015, does</p> <p>4 that question sound accurate?</p> <p>5 A Yeah. I asked questions about the purchase</p> <p>6 during what I understood the class period's beginning</p> <p>7 was. And so that sounds right without seeing it right</p> <p>8 now, but that would be the question I would have asked.</p> <p>9 Q And I think you did not ask the question in</p> <p>10 the Orijen misrepresentation survey whether they had</p> <p>11 actually bought Orijen during that time period.</p> <p>12 Was there a particular reason why?</p> <p>13 A Right now I don't recall that, so I couldn't</p> <p>14 answer it right now. If I double-checked later I can</p> <p>15 include that answer.</p> <p>16 Q And there was no question in the expectation</p> <p>17 survey whether any of the respondents had ever bought</p> <p>18 either Orijen or Acana, was there?</p> <p>19 A In the expectation survey the filter questions</p> <p>20 were focusing on what we call premium dog food. And</p> <p>21 then they -- they were shown a bag and the statements</p> <p>22 from the bag were taken from the Champion's products.</p> <p>23 Q Okay. Let's look at -- I have to find it, but</p> <p>24 it's Table 3 in your report. It's Page 7.</p> <p>25 A Can you repeat that? I was flipping pages, I</p>
<p style="text-align: right;">Page 67</p> <p>1 is substantially different than the smaller pool of</p> <p>2 Illinois participants in the Michigan survey, for</p> <p>3 example.</p> <p>4 Q Okay.</p> <p>5 A And there I did not see any statistically</p> <p>6 significant differences at the part-worth level. The</p> <p>7 part-worth as a measure of preferences was sufficient</p> <p>8 for me to do this test.</p> <p>9 Q Okay. The pretests in Illinois and New York,</p> <p>10 were those identical?</p> <p>11 A The New York survey instrument was slightly</p> <p>12 different.</p> <p>13 Q Sorry. I asked you a bad question, I</p> <p>14 misspoke. I meant to say Illinois and Michigan, were</p> <p>15 those pretests the same?</p> <p>16 A The pretest principle was the same by -- by</p> <p>17 identifying -- I believe the number is -- yeah, 155 was</p> <p>18 the number. So there were different pretests and</p> <p>19 different individuals made it into this pretest between</p> <p>20 Illinois and Michigan I think you asked about. That's</p> <p>21 correct.</p> <p>22 So then the pretest itself was just looking at</p> <p>23 the first round of results, looking at the questions</p> <p>24 that indicated confusion or non-understanding and then</p> <p>25 the survey continued.</p>	<p style="text-align: right;">Page 69</p> <p>1 didn't hear.</p> <p>2 Q Sorry. It's Page 7.</p> <p>3 A Page 7?</p> <p>4 Q Yes, sir.</p> <p>5 A Okay. I got it.</p> <p>6 Q The Orijen product in the misrepresentation</p> <p>7 survey was Regional Red; correct?</p> <p>8 A The Regional -- I didn't get the second part</p> <p>9 or the last word.</p> <p>10 Q Yeah, sorry. The Orijen product used in the</p> <p>11 misrepresentation survey was Orijen Regional Red;</p> <p>12 correct?</p> <p>13 A I would have to look at the actual screenshots</p> <p>14 to see what picture was shown.</p> <p>15 Q Okay. Describe for me the selection process,</p> <p>16 which product to use in the misrepresentation survey.</p> <p>17 A I don't recall at the moment. We needed the</p> <p>18 statements and I don't know if we based it on sales</p> <p>19 figures, I don't recall that, the particular reason for</p> <p>20 what images were shown.</p> <p>21 Q Do you have an opinion whether using a higher</p> <p>22 retail price product like Regional Red would have had</p> <p>23 any impact on the survey responses?</p> <p>24 A That would not be true, my opinion is it</p> <p>25 doesn't, simply for the fact that the price range</p>

<p style="text-align: right;">Page 70</p> <p>1 covered the prices that I observed as the sale prices.</p> <p>2 And another reason why it doesn't matter is</p> <p>3 that the way the conjoint design works, it shows every</p> <p>4 permutation of possible attributes. And so it would</p> <p>5 basically show attributes or different permutations and</p> <p>6 then -- in a fashion that none is shown more than any</p> <p>7 other and any pair is also not shown more frequently</p> <p>8 than other pair.</p> <p>9 So that -- that enures like a balanced design</p> <p>10 that would avoid these kind of like confusions. On the</p> <p>11 other hand, of course, if the prices were set completely</p> <p>12 wrong, if I had taken from zero to \$20 or from 200 to</p> <p>13 \$300, that can distort the impact of consumer</p> <p>14 preferences. But if the price range overlaps with the</p> <p>15 market prices that were observed in the actual world,</p> <p>16 then that does not happen typically.</p> <p>17 Q Okay. A few things just to make sure -- sort</p> <p>18 of consistent with what we talked about before, in an</p> <p>19 earlier deposition we talked about you had not done any</p> <p>20 analysis of Champion's costs for the ingredients, for</p> <p>21 example, that went into its food.</p> <p>22 I take it that's also still true?</p> <p>23 A That is correct, I did not analyze the cost</p> <p>24 structure of the products at issue here.</p> <p>25 Q Okay. And have you yet conducted any analysis</p>	<p style="text-align: right;">Page 72</p> <p>1 separately, no, I have not.</p> <p>2 Q Okay. Since the last time I took your</p> <p>3 deposition have you done anything to look at any impact</p> <p>4 of return terms, the ability of retailers to return</p> <p>5 products or how that may impact on what pricing they get</p> <p>6 from Champion?</p> <p>7 A I have not analyzed the impact of returns on</p> <p>8 prices or costs.</p> <p>9 Q Okay. Have you looked at anything to inform</p> <p>10 yourself about how retailers react to any of Champion's</p> <p>11 marketing strategies?</p> <p>12 A I haven't analyzed that either.</p> <p>13 Q Okay. Have you looked at any strategies</p> <p>14 individual retailers might use in order to spur sales of</p> <p>15 Champion Petfoods? In-store discounts, two for ones,</p> <p>16 anything like that?</p> <p>17 A I haven't analyzed any -- any marketing</p> <p>18 activities on the retailer side.</p> <p>19 Q Okay. Have you done anything to inform</p> <p>20 yourself what kinds of information salespersons in pet</p> <p>21 food retailers might give consumers who ask questions</p> <p>22 about Champion Petfoods?</p> <p>23 A I have not analyzed that.</p> <p>24 Q See, I told you all that would go fast.</p> <p>25 I think this was true from the last</p>
<p style="text-align: right;">Page 71</p> <p>1 of the costs of Champion's competitors?</p> <p>2 A No, I have not done any competitor analysis</p> <p>3 either.</p> <p>4 Q Okay. Have you done any analysis of</p> <p>5 Champion's production capabilities, ability to scale up,</p> <p>6 scale down?</p> <p>7 A I have not.</p> <p>8 Q Okay. Have you looked at any aspect of</p> <p>9 Champion's supply chain since the last time I took your</p> <p>10 deposition?</p> <p>11 A No, I have not.</p> <p>12 Q Okay. Done any analysis of whether Champion</p> <p>13 relies on wholesalers?</p> <p>14 A I have not done a separate analysis of that</p> <p>15 either.</p> <p>16 Q And have you done anything since the last time</p> <p>17 I took your deposition to form an opinion of the mix of</p> <p>18 sales between online compared to brick and mortar</p> <p>19 stores?</p> <p>20 A No, I have not.</p> <p>21 Q And since the last time I took your deposition</p> <p>22 have you done any analysis of whether Champion's pricing</p> <p>23 includes store discounts or customer loyalty or bundled</p> <p>24 pricing, anything of that nature?</p> <p>25 A I have not analyzed that pricing structure</p>	<p style="text-align: right;">Page 73</p> <p>1 deposition. In order to assess the impact of</p> <p>2 misrepresentations and omissions where they occurred,</p> <p>3 you would add the percentage impact together in order to</p> <p>4 get the total impact; is that right?</p> <p>5 A It is not simply adding it together. It's</p> <p>6 looking at it and basically take the union in the sense.</p> <p>7 So it's the more these statements are perceived to be</p> <p>8 dependent of each other, the more the sum of the</p> <p>9 individual impacts deviate from the total impact.</p> <p>10 (Reporter clarification.)</p> <p>11 THE WITNESS: The more the sum is -- I should</p> <p>12 rephrase that. The more dependent the individual</p> <p>13 statements are, the more the sum will deviate from the</p> <p>14 joint impact. So if they were totally independent in</p> <p>15 the consumers' preferences, then there would be -- the</p> <p>16 sum of the individuals would be exactly the sum of the</p> <p>17 joint one.</p> <p>18 Q BY MR. SHACKELFORD: Okay. Is there a place</p> <p>19 in your report where that phenomenon is discussed?</p> <p>20 A I don't believe I discussed that in detail or</p> <p>21 at all in the report because it's a calculation of how I</p> <p>22 specified the demand functions. And there they are</p> <p>23 basically in a joint equation. And that would be in the</p> <p>24 program file that calculates, has all the calculations,</p> <p>25 using the software Mathematica.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q Is there a formula or an algorithm or 2 something that's written someplace that that can be 3 examined? 4 A It is in the program itself when the function 5 demand curve estimation is specified. By the way how 6 that is set up you will see that it's -- the way the 7 regression equation is specified, it is following my 8 explanation basically. Or my explanation covers how 9 that was done. 10 Q Hard question to ask, which came first, the 11 chicken or the egg? 12 Did you program the instructions to take 13 account of the interdependence of the statements or did 14 you form opinions about the interdependence of the 15 statements based on the results produced by running the 16 program? 17 A The -- I hope my answer will answer your 18 question. The specification I used for the demand curve 19 is basically such that if there are dependencies they 20 will be caught, but I didn't look at the result and test 21 it if there really are dependencies. Because the 22 regression specification itself is the formula, so to 23 speak, that would take into account those overlaps or 24 dependencies. 25 Q Are those programming instructions a part of</p>	<p style="text-align: right;">Page 76</p> <p>1 A In the live Word document you can actually 2 click on it and it takes you to that specified page or 3 chapter. 4 Q Isn't that cool? 5 Table 14 on Page 63. 6 A Okay. 7 Q So if you've got Orijen misstatements, Orijen 8 omissions and all occurred, do you simply add these 9 figures up in each column, the point estimate, lower 10 bound and the upper bound? 11 A No, that's not additive. In Appendix 4 I do 12 list all combinations. So Appendix 4 would have a table 13 that shows each one at a time, then each possible 14 payoff, two, three, four and all the way to five or six. 15 So that table has all of the possible permutations. And 16 since this is based on a logarithmic specification of 17 the demand curves, the statistics you see on this page 18 are not additive. 19 Q Can you describe for me -- we'll just pick two 20 in Table 14 or if there's something else you need to 21 look at to answer the question, the relationship between 22 the first two entries there, biologically appropriate 23 and whole prey, you get 10.8 percent point estimate 24 assigned to biologically appropriate, 8.8 percent 25 assigned to whole prey.</p>
<p style="text-align: right;">Page 75</p> <p>1 the backup materials that you gave us? 2 A Yes. I -- I -- basically, I think it was 3 entire -- it should be of an NB extension that file, and 4 the programming language is Mathematica. And so NB 5 stands for Notebook, and that is the file that may 6 have -- I don't know, it has hundreds of thousands of 7 lines of code in it. But imbedded in there in the 8 demand curve estimation is the particular regression of 9 prior selection. 10 Q The damages calculations that you've done 11 for -- we'll just take them one at a time, for Illinois, 12 do they include damages for products that have both 13 misrepresentations and omissions? 14 A I have the -- the two surveys basically, 15 preferred product group Orijen and Acana and I 16 separately calculate for each of the misstatements or 17 omissions what the damage is. The reason for doing that 18 is that at the moment I don't -- at least to my 19 knowledge, the court has not decided which of the 20 statements ultimately would be found to be -- or felt it 21 might be found to be liable for. And therefore, I 22 tested the entire range of omissions and misstatements 23 that counsel gave to me. 24 Q One of the things I like about your reports is 25 your handy table of contents.</p>	<p style="text-align: right;">Page 77</p> <p>1 What's the relationship between those two, if 2 any? 3 A Those are the values individually that the 4 server resided in assigning to each individual 5 attribute. So it's 10.8 percent of the price when it's 6 biologically appropriate, and whole prey has 7 8.8 percent, meaning the whole prey is valued slightly 8 lower. 9 Q But I can't just add up those seven attributes 10 to get the 100 percent of the price? 11 A No. 12 Q What accounts for the difference? 13 A What do you mean by "What accounts for the 14 difference"? 15 Q Well, if I take 100 percent and I subtract 16 from it the sum of these attributes, what accounts for 17 the difference? 18 A I still don't understand what you mean by -- 19 adding what up right now? 20 Q Sorry. Let's just use nice round numbers 21 because that's what lawyers like. Let's just talk about 22 \$100 a bag is 100 percent. 23 And so if I add up the sum of these attributes 24 and the point value you've given there, I add them up, 25 subtract them from 100, I'm left with some number;</p>

<p style="text-align: right;">Page 78</p> <p>1 right?</p> <p>2 A That is correct. There is some number left.</p> <p>3 Q And so what does that some number represent?</p> <p>4 A Again, it's not as simple -- as I said, these</p> <p>5 are all based on logarithms. So if I want to have --</p> <p>6 the combined impact calculations may not -- I mean, take</p> <p>7 your example biologically appropriate and whole prey may</p> <p>8 not necessarily add up to -- what would that be, 10.8</p> <p>9 and 8.8, so 19.6. So that's the first part. It's not</p> <p>10 edited because of the model specification.</p> <p>11 Now, what the number, whatever it will be</p> <p>12 calculated, is a product now that has none of those</p> <p>13 attributes. And taking, for example, the omissions, if</p> <p>14 we're adding that up and that number is larger than</p> <p>15 100 percent, then that would indicate that a product</p> <p>16 that has preservatives, heavy metals, BPA, regrinds,</p> <p>17 whatever the negative attributes are, if the overall</p> <p>18 value remaining is negative, then that means that the</p> <p>19 product with all of those negative attributes would be</p> <p>20 what we call in economics a "bad." It's not a "good"</p> <p>21 anymore, it's a "bad." Because all of those negative</p> <p>22 attributes combined will create negative utility,</p> <p>23 meaning that -- I mean, colloquially we say when</p> <p>24 something is a bad you will have to pay me money to buy</p> <p>25 that.</p>	<p style="text-align: right;">Page 80</p> <p>1 A That would be the table in the Appendix 4 on</p> <p>2 the top of Page 63. I say that there in Appendix 4</p> <p>3 contains the list of all possible combinations of the</p> <p>4 claims.</p> <p>5 And let's say we have six misstatements and I</p> <p>6 would -- I did calculate every single one individually,</p> <p>7 which is listed here, but also would have looked at all</p> <p>8 possible pairs, triples, quadruples and so forth all the</p> <p>9 way up to taking one where all statements were</p> <p>10 misstatements.</p> <p>11 And the reason why I did it this way is to --</p> <p>12 since I don't know at the moment how the court will</p> <p>13 decide on which statement will be an issue statement for</p> <p>14 which the court may find that Champion's will be liable,</p> <p>15 then I wanted to have that overall matrix with all</p> <p>16 combinations as a guide to see what happens if the 4 and</p> <p>17 3, for example, are found a liability.</p> <p>18 Q Do you have an opinion based upon the results</p> <p>19 of your research whether Champion Petfoods that you</p> <p>20 looked at have any intrinsic value?</p> <p>21 A You would have to define intrinsic value.</p> <p>22 That's such a loaded term.</p> <p>23 Q Well, you're aware there's no claim in any of</p> <p>24 the three cases that any of the plaintiffs' pets were</p> <p>25 harmed by virtue of eating Champion's Petfoods; correct?</p>
<p style="text-align: right;">Page 79</p> <p>1 That can happen when -- when product</p> <p>2 attributes -- a product has negative attributes that</p> <p>3 overall has negative value. Buying a bag of</p> <p>4 E. coli-contaminated spinach at the grocery store and it</p> <p>5 cost \$4, then we can argue that the farmer had to pay</p> <p>6 the workers and logistics, transportation, packaging</p> <p>7 cost, that the damage is not the purchase price or more.</p> <p>8 So that's kind of like what is an indicator of</p> <p>9 how bad a product can be or can be perceived by the</p> <p>10 market.</p> <p>11 Q Based upon the results of your survey, did you</p> <p>12 form an opinion whether Champion Petfoods or any of them</p> <p>13 that you looked at were a "bad" as you've described</p> <p>14 them?</p> <p>15 A For that I would have to look at the table,</p> <p>16 but right now I can't recall what -- what -- for the</p> <p>17 misstatements I do recall that the price goes really</p> <p>18 down or would go down to a level of very cheap dog</p> <p>19 foods. So that's -- the price would drop significantly,</p> <p>20 but from what I recall did not go below zero, which</p> <p>21 would indicate that the food -- the product is a "bad"</p> <p>22 per se.</p> <p>23 Q Is it Table 14 or some other table that we</p> <p>24 would look at in order to be able to figure out if you</p> <p>25 ever got to a point where the product was a "bad"?</p>	<p style="text-align: right;">Page 81</p> <p>1 A I do not recall from the complaints of any</p> <p>2 mention of harm of pets.</p> <p>3 Q So the --</p> <p>4 A I have not heard about harm to animals.</p> <p>5 Q Okay. So the E. coli-tainted spinach example,</p> <p>6 we'll just take that away, because it would be harmful</p> <p>7 to consume that and that's why you wouldn't do it, but</p> <p>8 there's not a claim that pets were injured or harmed by</p> <p>9 virtue of eating Champion Petfoods; correct?</p> <p>10 A Not to my knowledge, that is correct.</p> <p>11 Q Okay. And whatever else may be said about</p> <p>12 them, each of the diets has -- provides calories to the</p> <p>13 animal when the animal eats it, do you agree with that?</p> <p>14 MS. BORRELLI: Object to form.</p> <p>15 THE WITNESS: Yeah. I mean, it fulfills some</p> <p>16 -- some need and that's what I've shown that if all the</p> <p>17 statements are not true at the same time, it would</p> <p>18 basically be a product of the low-priced dog foods.</p> <p>19 Maybe that's what you meant by intrinsic value. So</p> <p>20 there's some residual value because it still is a "good"</p> <p>21 and not a "bad."</p> <p>22 Q BY MR. SHACKELFORD: Did you form any belief</p> <p>23 based on whether it's price per calorie, price per</p> <p>24 protein gram, any kind of dollar per unit of something</p> <p>25 that there was a value below which, if the price dropped</p>

<p style="text-align: right;">Page 82</p> <p>1 below that it would be unreasonable?</p> <p>2 MS. BORRELLI: Object to form.</p> <p>3 THE WITNESS: I did not perform an analysis.</p> <p>4 I just found low price pet foods that that's basically</p> <p>5 around the same amount. In the ballpark.</p> <p>6 Q BY MR. SHACKELFORD: Okay. And when you got</p> <p>7 to that and you saw that okay, based on the results of</p> <p>8 the survey, Champion would be slotted here in the same</p> <p>9 price range as these low-priced pet foods, did you take</p> <p>10 it any step further to see on a per protein basis, per</p> <p>11 calorie basis, per nutrient basis, do any sort of</p> <p>12 comparison of whether Champion really did from a</p> <p>13 nutritional standpoint compare with those lesser</p> <p>14 expensive products?</p> <p>15 MS. BORRELLI: Object to form. He's not a</p> <p>16 nutrition expert.</p> <p>17 THE WITNESS: Yeah. I did not analyze that</p> <p>18 matter.</p> <p>19 Q BY MR. SHACKELFORD: Do you think it would be</p> <p>20 reasonable to do some sort of comparison of ingredients,</p> <p>21 nutrition facts, anything else on the package between</p> <p>22 the Champion Petfoods and the lower-priced products that</p> <p>23 your survey would suggest it should be sold for</p> <p>24 comparable price?</p> <p>25 A I mean, first I have to slightly correct of</p>	<p style="text-align: right;">Page 84</p> <p>1 it is, but I want to understand how this regression</p> <p>2 calculates market share?</p> <p>3 A In this context of the conjoint, the target</p> <p>4 population is a representation of -- the survey</p> <p>5 respondents are a representation of the target</p> <p>6 population. And in this context market share is not the</p> <p>7 Champion's Petfood market share in the overall market.</p> <p>8 Here I'm referring to by market share, it's</p> <p>9 the ratio or the percentage of individual respondents</p> <p>10 for which the model predicts a first probability. And</p> <p>11 then aggregating this purchase probabilities across</p> <p>12 the -- across the entire study group gives a percentage</p> <p>13 that indicates the share of respondents who would buy a</p> <p>14 particular permutation of the products that were shown</p> <p>15 to them.</p> <p>16 So it's not a market share in the sense that</p> <p>17 it looks at any -- any dog food producer share of the</p> <p>18 overall pet food market.</p> <p>19 Q So was it -- I appreciate the response. Was</p> <p>20 the manner in which you did the market simulations</p> <p>21 described in Paragraph 166 of your Illinois report the</p> <p>22 same as it had been in the reports you did for Minnesota</p> <p>23 or anywhere else?</p> <p>24 A Yeah. The methodology of using part-worth</p> <p>25 calculate the purchase probabilities and then specify</p>
<p style="text-align: right;">Page 83</p> <p>1 one aspect of your question. I did not pick a product</p> <p>2 and then say this is what is alike to the Champion's. I</p> <p>3 just looked for prices. Because my study had shown that</p> <p>4 in the statements that -- if the judge finds that they</p> <p>5 are misstatements, then I have basically just provided a</p> <p>6 formula what the drop-in value would be, but I have not</p> <p>7 analyzed these other matters that you have mentioned,</p> <p>8 simply for the fact that for what I needed to calculate</p> <p>9 based on the scope of my retention that wasn't</p> <p>10 necessary.</p> <p>11 Q I'll ask you to look, Mr. Boedeker, at</p> <p>12 Paragraph 170 of your report?</p> <p>13 A Okay. I'm right there.</p> <p>14 Q Let me make sure I have the right thing, I'm</p> <p>15 asking you the right question. That's not what I wanted</p> <p>16 to ask you about. Give me just a second.</p> <p>17 I'm sorry. Paragraph 166.</p> <p>18 A Okay. Page 61. I got it.</p> <p>19 Q Yes. And there's a sentence in the middle of</p> <p>20 Paragraph 166 that reads, "Our regression analysis</p> <p>21 isolates the contribution of each attribute level and</p> <p>22 the market share to the variable price."</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And by all means put it in context, whatever</p>	<p style="text-align: right;">Page 85</p> <p>1 demand curves using the share of respondents on the</p> <p>2 horizontal axis, so to speak, of the demand curves, that</p> <p>3 that is -- or was consistently applied across the</p> <p>4 different surveys.</p> <p>5 Q And in your report for Illinois, did you</p> <p>6 calculate a market price for Champion Petfoods in the</p> <p>7 but-for world?</p> <p>8 A The way the calculations are done, what is</p> <p>9 basically calculated for the but-for world is the</p> <p>10 willingness to pay of the marginal consumer. And by</p> <p>11 definition the willingness to pay of the marginal</p> <p>12 consumer is the market price. Because again, the market</p> <p>13 consumer is defined as somebody who buys at the</p> <p>14 willingness to pay.</p> <p>15 So that's why the -- the number that comes out</p> <p>16 of my equations and models is the price in the but-for</p> <p>17 world for a product that doesn't exist in the actual</p> <p>18 world, corrected for the alleged wrongdoing.</p> <p>19 (Reporter clarification.)</p> <p>20 Q BY MR. SHACKELFORD: And I think we all know</p> <p>21 the answer to this, but your analysis didn't look to</p> <p>22 examine Champion's willingness to sell that same product</p> <p>23 at the price the marginal purchaser would pay in the</p> <p>24 but-for world; correct?</p> <p>25 A Yeah, that's not necessary to examine the</p>

<p style="text-align: right;">Page 86</p> <p>1 willingness to pay because this is not a lawsuit about 2 making the producer whole. The willingness to sell of a 3 producer manufacturer is based on the notion that it 4 will be a price that minimizes the marginal cost. 5 So in this case, from a -- as a consumer class 6 action the question is by how much did the consumer 7 overpay so the consumer needs to be made whole. And 8 it's not a question what is the best price at which the 9 manufacturer will still maximize their profits and 10 margins by minimizing their marginal cost, which is 11 indicated by willingness to sell. 12 Q Okay. So I take it -- I understand it's your 13 opinion it wasn't necessary to do that. 14 My question is, you didn't examine any aspect 15 of Champion's willingness to sell at the marginal price 16 that the marginal consumer would pay in the but-for 17 world or any other aspect of Champion's willingness to 18 sell; correct? 19 A Let's put it this way. I did not do an 20 analysis of -- maybe I should use the notion of the 21 willingness to accept a certain price. I did not 22 analyze that. 23 But the reasoning is because it wasn't 24 necessary in my opinion. 25 Q I'm going to ask you, Mr. Boedeker, to look at</p>	<p style="text-align: right;">Page 88</p> <p>1 Table 15 overlapped the ones at the interval attribute 2 level of Table 14. 3 And that is just a robustness check to see if 4 a model based on an overall aggregate is similar, the 5 results, statistically speaking, are significantly 6 different if I choose this method where I'm going across 7 all the draws and run 1,000 different regressions. 8 Q BY MR. SHACKELFORD: Is Table 15 used to 9 support the reasonableness of the calculations or the 10 numbers set forth in Table 14? 11 A Yeah. It's the validity check I would call 12 it, and it shows that the numbers are not statistically 13 significantly different from each other. What might 14 happen is if the sample size were too small, one could 15 see differences between those two different 16 calculations. But here they are statistically speaking 17 not different from each other, and that was for me a 18 validation of the robustness of the aggregate level of 19 regression in Table 14. 20 Q Is it accurate to say that the values in 21 Table 14 are the ones you used to compute damages? 22 A That is correct, Table 14 was the basis for 23 the damages calculation. 24 Q As between the method used to get the values 25 in Table 14 and the values in Table 15, in your opinion</p>
<p style="text-align: right;">Page 87</p> <p>1 Table 15 on Page 64 and Table 14 on Page 63, and my 2 question is, what's the difference between these two 3 tables? 4 A Let me just look at that. Unfortunately, I 5 have them printed out double-sided so I have to flip 6 back and forth in order to answer your question. 7 The difference is in Table 14 presents the 8 results of the regression estimation aggregated to 9 basically one data point to consumer -- participants I 10 should say, and then calculating the point estimates, 11 whereas in Table 15, and I have to go back into how this 12 whole estimation technique works, the conjoined 13 methodology uses -- 14 (Reporter clarification.) 15 THE WITNESS: The conjoined methodology uses 16 an estimation technique that is called hierarchical 17 bayesian estimation, and in this estimation methodology 18 there are literally -- I use 20,000 draws, the first 19 10,000 draws I use to have these part-worth converge, 20 and then I run another 10,000. 21 And here what I did to test the robustness of 22 the results from the aggregate regression, I ran 1,000 23 regressions across the draws. And that way it showed 24 that all of the results are within confidence intervals 25 of each other. So the confidence intervals reported in</p>	<p style="text-align: right;">Page 89</p> <p>1 is one superior to the other? 2 A No. I mean, they are used to cross-validate. 3 The one that uses the overall aggregate information is 4 the one that is -- the one that is most discussed in the 5 literature, but I wanted to see -- to test the 6 robustness I came up with this validation check by using 7 the information from more individualized drawings. 8 Again, there's a list of 10,000 of those draws 9 and I looked at steps that resulted in 1,000 different 10 regressions. Instead of just focusing on the one at the 11 aggregate level. 12 Q Looking at Table 14, can you describe for me 13 the methodology for calculating the lower and upper 14 bounds that are set forth in those respective columns in 15 Table 14? 16 A The lower and upper bounds in a regression 17 setting that sets formulas of how to calculate the upper 18 and lower bounds, it's basically in the first step the 19 standard error of a coefficient of the point estimate is 20 being calculated from the data. And I believe I used 21 the 95 -- yeah, 95 percent content interval as the head 22 of Table 14 indicates. 23 So the standard arrow will then be combined 24 with the desired confidence at which the interval is 25 being recorded. And then it's just applying a formula</p>

<p style="text-align: right;">Page 90</p> <p>1 to calculate this.</p> <p>2 Q Is it accurate to say that in estimating the</p> <p>3 economic loss or damages you have averaged the</p> <p>4 part-worths of all of the respondents in your survey?</p> <p>5 A It's slightly different; it's a bit more</p> <p>6 complicated. The part-worths themselves are calculated</p> <p>7 in the first step. Then the part-worth -- and then</p> <p>8 being entered to calculate purchase probabilities. And</p> <p>9 then the purchase probabilities that they are being</p> <p>10 aggregated, so that I have a market-wide number, and</p> <p>11 that's what I call market share, I should put that in</p> <p>12 quotation marks because it's not to be confused with</p> <p>13 another definition of market share. And then those</p> <p>14 quantities --</p> <p>15 Excuse me?</p> <p>16 Somebody's in the picture there. I see.</p> <p>17 THE REPORTER: I'm sorry about that. Hold on.</p> <p>18 THE WITNESS: I lost my train of thought.</p> <p>19 Can you reread the last one or two sentences?</p> <p>20 (Reporter clarification.)</p> <p>21 THE WITNESS: It might be easier if</p> <p>22 Mr. Shackelford just repeats his question. Sorry about</p> <p>23 that.</p> <p>24 Q BY MR. SHACKELFORD: That's okay. We all got</p> <p>25 kind of derailed a little bit.</p>	<p style="text-align: right;">Page 92</p> <p>1 of an attribute that has the level I have -- or the</p> <p>2 product has heavy metals versus it doesn't have heavy</p> <p>3 metals follows the -- the recipe I was saying. I think</p> <p>4 there should be some citations in my report that shows</p> <p>5 that literature. And so that's something that is</p> <p>6 documented in textbooks and then research papers.</p> <p>7 MR. SHACKELFORD: Raina, do you mind if we</p> <p>8 just take five? Because I think I'm about done.</p> <p>9 MS. BORRELLI: Oh, good.</p> <p>10 MR. SHACKELFORD: I'm going to double-check.</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. SHACKELFORD: That would be okay? Or why</p> <p>13 don't we just come back the bottom of the hour.</p> <p>14 MS. BORRELLI: All right.</p> <p>15 THE VIDEOGRAPHER: We are off the record. The</p> <p>16 time is 3:22 p.m.</p> <p>17 (A brief recess was taken.)</p> <p>18 THE VIDEOGRAPHER: We are back on the record.</p> <p>19 The time is 3:34 p.m.</p> <p>20 Q BY MR. SHACKELFORD: Okay. So, Mr. Boedeker,</p> <p>21 what we've done is I've asked you to look at the last</p> <p>22 page of your appendices, which will be Appendix 4, and</p> <p>23 you were able to pull that up on your computer and look</p> <p>24 at electronic copy; correct?</p> <p>25 A That is correct. I'm currently looking at</p>
<p style="text-align: right;">Page 91</p> <p>1 You were explaining to me that the damage</p> <p>2 calculation is not strictly speaking the average of the</p> <p>3 part-worths of all the respondents in the survey.</p> <p>4 A Okay. I got it. So I was explaining how the</p> <p>5 data, the part-worth data going to the -- what's called</p> <p>6 the Mixed Logits models where I'm estimating the</p> <p>7 quantities, the purchase likelihoods that then are</p> <p>8 summarized into the market share.</p> <p>9 And then I'm basically using the demand curve</p> <p>10 estimations, where I now have for different prices for</p> <p>11 different product combinations, I can tell the interval</p> <p>12 market share. So now I have a bunch of data points that</p> <p>13 have two components; one is a price and the other one is</p> <p>14 a quantity, what I call "the market share." And then</p> <p>15 ultimately is the input for the damages calculations.</p> <p>16 The difference in the market -- excuse me --</p> <p>17 in the demand curve that has an attribute versus it</p> <p>18 doesn't have an attribute. So it's more -- much more</p> <p>19 involved than just simply taking the part-worth number.</p> <p>20 Q And is there some authoritative source in</p> <p>21 academic literature or otherwise that you relied upon in</p> <p>22 the way you've calculated the economic loss as you've</p> <p>23 just described it?</p> <p>24 A It is the accepted way of calculating the</p> <p>25 value of attributes. And then by calculating the value</p>	<p style="text-align: right;">Page 93</p> <p>1 Page 375 out of 375. And it's within Appendices 1</p> <p>2 through 4 is the name of the document.</p> <p>3 Q Okay. And can you explain to me what this</p> <p>4 page represents?</p> <p>5 A This particular page is the -- contains the</p> <p>6 results of the misrepresentations and omissions</p> <p>7 individually and in combination. So, for example, it</p> <p>8 shows what each individual omission's drop-in value</p> <p>9 would be, but it also shows the combination.</p> <p>10 Q Does it show the combination of</p> <p>11 misrepresentations and omissions?</p> <p>12 A No. They were separate surveys, so the</p> <p>13 calculations have to be contained within the survey</p> <p>14 level. And the labeling under claims, which is the</p> <p>15 second column from the left shows the combinations</p> <p>16 within a particular survey. It would be inappropriate</p> <p>17 statistically speaking to mix and match the regression</p> <p>18 results from different surveys.</p> <p>19 Q So if ultimately -- just as an example, if we</p> <p>20 look at Acana omissions, we see the upper bound for</p> <p>21 expired, heavy metals, BPA and regrinds to be 87.1;</p> <p>22 right?</p> <p>23 A Which row are you at right now? Sorry. At</p> <p>24 the bottom very bottom, yes.</p> <p>25 Q Very bottom row.</p>

<p style="text-align: right;">Page 94</p> <p>1 A I got it.</p> <p>2 Q And if you take the very bottom row of</p> <p>3 misrepresentations, which would be biologically</p> <p>4 appropriate, nourish and regional and the upper -- you</p> <p>5 know -- what are we to make of a finding that a jury</p> <p>6 decides that they agree with you, that the effect of</p> <p>7 those four omissions is 87.1? Tell me what that means.</p> <p>8 A That would be the upper bound. I would</p> <p>9 probably argue -- and in my tables for the economic loss</p> <p>10 I argued with the point estimate, which is the number in</p> <p>11 the middle, it's titled "Economic Value." And so that</p> <p>12 would be the 84.7 percent. And if the court were to</p> <p>13 find or the jury were to find that all of those</p> <p>14 omissions really are correct, that they would find</p> <p>15 Champion's liable for that, then that would be a</p> <p>16 reduction of the overall price by this percentage.</p> <p>17 Q So in other words, the damages that the class</p> <p>18 should get is whatever the sales were, they get 87 -- or</p> <p>19 84.71 percent of that return to them as damages, is that</p> <p>20 how we understand this?</p> <p>21 A Yeah. Expression as a percentage would be</p> <p>22 multiplied against the revenue figure. That is correct.</p> <p>23 Q Okay. And if the same jury also determines</p> <p>24 that misrepresentations of biologically appropriate,</p> <p>25 nourish and regional caused the price to be inflated by</p>	<p style="text-align: right;">Page 96</p> <p>1 misrepresentations, biologically appropriate, nourish,</p> <p>2 regional, and they agree with your economic value of</p> <p>3 29.92.</p> <p>4 With me?</p> <p>5 A Yeah. Okay.</p> <p>6 Q Okay. Same jury in the same case also finds</p> <p>7 omissions, expired, heavy metals, BPA, regrinds, and</p> <p>8 they agree with your economic value, 84.71 percent.</p> <p>9 With me?</p> <p>10 A Yes.</p> <p>11 Q In the event of those two findings what are</p> <p>12 the damages?</p> <p>13 A The damages here would then be -- again, would</p> <p>14 be an economic "bad." And in cases like that oftentimes</p> <p>15 the purchase price would be used as the measure of</p> <p>16 damages.</p> <p>17 Q And the way we know it's an economic "bad" is</p> <p>18 by adding the 84.71 and the 29.92 and getting a figure</p> <p>19 that is more than 100 percent; correct?</p> <p>20 A That is correct, yeah. The overall reduction</p> <p>21 exceeds the purchase price of the product, which then</p> <p>22 from an economic point of view indicates that there's</p> <p>23 negative utility associated in buying a product that has</p> <p>24 all of the negative attributes and not any of the</p> <p>25 positive attributes. That's correct.</p>
<p style="text-align: right;">Page 95</p> <p>1 29.92 percent, that's what the bottom line, the last row</p> <p>2 under misrepresentations reflects; right?</p> <p>3 A Yeah, let me just -- I found that. 29.92,</p> <p>4 that's correct. So that would be the -- if all of the</p> <p>5 misstatements were -- all of those positive statements</p> <p>6 were found to be misstated, then that would lower the</p> <p>7 price by 29. And the omissions were 84.71, so how that</p> <p>8 can be interpreted right now is that a dog food that has</p> <p>9 none of the positive attributes and has a lot of the</p> <p>10 negative attributes that I tested would turn into an</p> <p>11 economic "bad." Because the sum is more than the</p> <p>12 purchase price, right, it's greater than 100.</p> <p>13 Q And that's how these relate to one another, I</p> <p>14 appreciate that they're independent surveys, but if a</p> <p>15 jury finds the bottom row in Acana in each one of these,</p> <p>16 they get to a damage figure that's more than 100 percent</p> <p>17 of the purchase price; right?</p> <p>18 MS. BORRELLI: Objection; calls for a legal</p> <p>19 conclusion.</p> <p>20 THE WITNESS: Yeah, I don't know what you're</p> <p>21 adding to the 84.7 that that would give something</p> <p>22 greater than 100. Not for all of the combinations.</p> <p>23 Q BY MR. SHACKELFORD: But I'm looking at two</p> <p>24 rows and figuring out how we would deal with a jury</p> <p>25 verdict that found those two rows. Row 1 is under</p>	<p style="text-align: right;">Page 97</p> <p>1 Q And just not to put too fine a point on it,</p> <p>2 but is it an accurate extrapolation of your opinion that</p> <p>3 the total damages reached with those two rows would be</p> <p>4 approximately 13 percent more than total retail revenues</p> <p>5 from sales of the product?</p> <p>6 MS. BORRELLI: Objection; misstates testimony.</p> <p>7 THE WITNESS: I have not studied the</p> <p>8 allocation or distribution of damages, but these are the</p> <p>9 results. And again, it's quite possible that stripping</p> <p>10 a product of positive attributes and adding negative</p> <p>11 attributes if again the allegations in the complaint are</p> <p>12 true, can turn a product into an economic "bad." And</p> <p>13 then the indicator for that would be that overall the</p> <p>14 loss amount is larger than the purchase price.</p> <p>15 And again, I have not seen or done a</p> <p>16 calculation where that was the case, but I've seen other</p> <p>17 reports where in those cases the purchase price would</p> <p>18 have been the damages that were calculated.</p> <p>19 Q BY MR. SHACKELFORD: Is it accurate to say</p> <p>20 that based upon your surveys, consumers who bought Acana</p> <p>21 products overpaid by virtue of misrepresentations?</p> <p>22 MS. BORRELLI: Objection; calls for a legal</p> <p>23 conclusion.</p> <p>24 THE WITNESS: Again, what my study set out to</p> <p>25 do is to see if an attribute changes in a product, how</p>

<p style="text-align: right;">Page 98</p> <p>1 does that impact the consumers' preferences and</p> <p>2 ultimately the price. And when I look at the Acana</p> <p>3 misrepresentations I think you mentioned that the</p> <p>4 percentages there are greater than zero. So that means</p> <p>5 each attribute that I tested has a value to the</p> <p>6 consumer.</p> <p>7 Q Right. And the way -- on the</p> <p>8 misrepresentations the way you calculate damages is you</p> <p>9 subtract the percentage of each one from 100; right?</p> <p>10 A No. This percentage, I'm looking at Acana</p> <p>11 misrepresentation, biologically appropriate and I think</p> <p>12 the number -- let me just make sure I'm on the right</p> <p>13 line, 9.58.</p> <p>14 Q Uh-huh.</p> <p>15 A So that percentage would be applied to the</p> <p>16 purchase price. If the bag was 98 -- or 89.99 I would</p> <p>17 multiply that by 9.58 percent and that portion would</p> <p>18 represent the economic loss.</p> <p>19 Q And the value of the attribute of expired</p> <p>20 under Acana omissions is 28.3 percent; right?</p> <p>21 A Yeah. It's actually -- the value -- the</p> <p>22 lowering of the value when the Acana product is known to</p> <p>23 have expired ingredients, that would lead to a drop in</p> <p>24 value of 28.3 percent. Expired is not worth 28.3</p> <p>25 percent, the price will drop by that percentage when it</p>	<p style="text-align: right;">Page 100</p> <p>1 THE WITNESS: The combined impact of omissions</p> <p>2 and misrepresentations would be the sum of whatever</p> <p>3 combination you're looking for here --</p> <p>4 Q BY MR. SHACKELFORD: Okay.</p> <p>5 A -- that is shown in this table. The jury or</p> <p>6 the judge were finding that none of the -- well, they</p> <p>7 were misstatements which reflect positive attributes.</p> <p>8 If the product didn't have any of the positive</p> <p>9 attributes listed but would have all of the negative</p> <p>10 attributes, then the fact that the sum adds up to more</p> <p>11 than 100 shows that in the eyes of the consumer this</p> <p>12 product now is not a "good," it's a "bad."</p> <p>13 MR. SHACKELFORD: Those are all the questions</p> <p>14 I have for you today, Mr. Boedecker.</p> <p>15 THE WITNESS: I'll try to get back here.</p> <p>16 Okay.</p> <p>17 MS. BORRELLI: Could we take five minutes just</p> <p>18 so I can gather my notes together? I promise to be</p> <p>19 quick.</p> <p>20 MR. SHACKELFORD: Sure.</p> <p>21 MS. BORRELLI: Thank you.</p> <p>22 THE VIDEOGRAPHER: We are off the record. The</p> <p>23 time is 3:48 p.m.</p> <p>24 (A brief recess was taken.)</p> <p>25 THE VIDEOGRAPHER: We are back on the record.</p>
<p style="text-align: right;">Page 99</p> <p>1 is true when it can be shown that it contains expired</p> <p>2 ingredients.</p> <p>3 Q And so again, I think we've covered this, but</p> <p>4 I want to make sure.</p> <p>5 You said that Table 4 shows us all of the</p> <p>6 combinations of the misrepresentations and all of the</p> <p>7 combinations of omissions for Orijen and Acana</p> <p>8 respectively; right?</p> <p>9 A That is correct, yes.</p> <p>10 Q And then the way we use the same table in</p> <p>11 order to show the combined impact of each</p> <p>12 misrepresentation and each omission for the respective</p> <p>13 product; right?</p> <p>14 A That's correct.</p> <p>15 MS. BORRELLI: Objection; misstates testimony.</p> <p>16 Q BY MR. SHACKELFORD: Again, that's the</p> <p>17 justification we just talked about for adding together</p> <p>18 the 29.92 percent reduction in price for the combined</p> <p>19 misrepresentations of biologically appropriate, nourish</p> <p>20 and regional and the omission of expired, heavy metals,</p> <p>21 BPA and regrinds of a reduction in value of</p> <p>22 84.71 percent.</p> <p>23 We want to know the total, we just add those</p> <p>24 two numbers together; correct?</p> <p>25 MS. BORRELLI: Objection; misstates testimony.</p>	<p style="text-align: right;">Page 101</p> <p>1 The time is 3:54 p.m.</p> <p>2 ///</p> <p>3 EXAMINATION</p> <p>4 BY MS. BORRELLI:</p> <p>5 Q Mr. Boedecker, earlier Mr. Shackelford was</p> <p>6 asking you about your experience doing what we've called</p> <p>7 an expectation survey in this case and other litigation</p> <p>8 cases that you've been involved in.</p> <p>9 Do you recall that testimony?</p> <p>10 A Yes, I do.</p> <p>11 Q Have you ever done surveys similar to the</p> <p>12 expectation survey done here in your</p> <p>13 non-litigation-related work?</p> <p>14 A Yes, I've done that multiple times.</p> <p>15 Q How many would you estimate?</p> <p>16 A I mean, probably at least 50, if not more. I</p> <p>17 did a lot of consulting work that dealt with measuring</p> <p>18 consumers' expectations when assessing new products,</p> <p>19 bundling of products or attributes of existing products.</p> <p>20 Q Okay. And then Mr. Shackelford was asking you</p> <p>21 about Appendix 4 just a bit ago and about whether you</p> <p>22 could combine the results of the misrepresentations and</p> <p>23 omissions survey.</p> <p>24 Your testimony about whether those results</p> <p>25 could be combined, did that assume that the</p>

Page 102

1 misrepresentations results and the omissions results
 2 were independent or dependent?
 3 A Adding those two means that they are
 4 independent, it's based on that assumption, which is
 5 something that I have not tested. But under the
 6 assumption of independence they're edited.
 7 Q Okay. So you don't know sitting here today
 8 whether they're independent or dependent because you
 9 didn't test that?
 10 A That's right. I haven't tested it, so I don't
 11 know the degree of any dependency or independence.
 12 Q And in your report and as part of your expert
 13 opinions in this case, are you opining that the
 14 omissions damages and the misrepresentations damages are
 15 additive?
 16 A Again, I have not opined on that because I
 17 haven't done the tests necessary. I report the damages
 18 as they are one by one in my report.
 19 MS. BORRELLI: Okay. I think that's all the
 20 questions I have. Thank you.
 21 MR. SHACKELFORD: I have no further questions
 22 for you today, Mr. Boedeker. I really appreciate your
 23 time and to everyone appreciate your patience and
 24 flexibility on trying to get this kicked off. So I
 25 appreciate that.

Page 103

1 THE WITNESS: You're welcome.
 2 MS. BORRELLI: Thank you. And we will read
 3 and sign.
 4 MR. SHACKELFORD: I'm sorry?
 5 MS. BORRELLI: We will read and sign.
 6 MR. SHACKELFORD: Okay. Perfect.
 7 THE VIDEOGRAPHER: We are off the record. The
 8 time is 3:58 p.m. on March 16th, 2021. This concludes
 9 today's testimony given by Stefan Boedeker.
 10 The total number of media units used was five
 11 and will be retained by Veritext Legal Solutions.
 12 (Time Noted: 3:58 P.M.)
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 104

1 PENALTY OF PERJURY
 2
 3 I, STEFAN BOEDECKER, do hereby declare under
 4 penalty of perjury that I have read the foregoing
 5 transcript of my deposition; that I have made such
 6 corrections as noted herein, in ink, initialed by me, or
 7 attached hereto; that my testimony as contained herein,
 8 as corrected, is true and correct.
 9
 10 EXECUTED this _____ day of _____,
 11 20__, at _____,
 12 (City) (State)
 13
 14 _____
 15 STEFAN BOEDECKER
 16 Volume I
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 105

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER
 2 I, Rochelle Holmes, the undersigned, a Certified
 3 Shorthand Reporter of the State of California, do hereby
 4 certify:
 5 That the foregoing proceedings were taken
 6 before me via videoconference; that any witnesses in the
 7 foregoing proceedings, prior to testifying, were
 8 administered an oath; that a record of the proceedings
 9 was made by me using machine shorthand which was
 10 thereafter transcribed under my direction; that the
 11 foregoing transcript is a true record of the testimony
 12 given.
 13 Further, that if the foregoing pertains to the
 14 original transcript of a deposition in a Federal Case,
 15 before completion of the proceedings, review of the
 16 transcript [X] was [] was not requested.
 17 I further certify I am neither financially
 18 interested in the action nor a relative or employee
 19 of any attorney or any party to this action.
 20 IN WITNESS WHEREOF, I have this date subscribed my
 21 name. Dated: March 22, 2021
 22
 23
 24 Rochelle Holmes
 25 Rochelle Holmes
 CSR No. 9482, CCRR No. 0123

TRANSCRIPT ERRATA SHEET

DEPONENT: Stefan Boedeker
CASE NAME: Colangelo, et al. v. Champion Petfoods USA Inc. and Champion
Petfoods LP, United States District Court Northern District of New
York
CASE NO.: 6:18-cv-01228 [LEK/DEP]
DEPOSITION DATE: March 16, 2021

PAGE(S)	LINE(S)	CORRECTION	REASON
1	14	<i>Replace:</i> “Boedecker” <i>With:</i> “Boedeker”	Transcription error
2	14	<i>Replace:</i> “Boedecker” <i>With:</i> “Boedeker”	Transcription error
5	3	<i>Replace:</i> “Boedecker” <i>With:</i> “Boedeker”	Transcription error
7	15	<i>Replace:</i> “Boedecker” <i>With:</i> “Boedeker”	Transcription error
15	11	<i>Strike:</i> “survey - -“	Transcription error
18	5	<i>Replace:</i> “shows” <i>With:</i> “it shows”	Transcription error
18	7	<i>Replace:</i> “likelihood” <i>With:</i> “likelihoods”	Transcription error

PAGE(S)	LINE(S)	CORRECTION	REASON
19	10-11	Replace: “then the purchase will likely also go down.” With: “the purchase likelihood will also go down.”	Transcription error
23	17-18	Replace: “this was also associated federal case and after the case settled” With: “There was also an associates’ federal case, after the cases settled”	Transcription error
24	13	Replace: “pasturization” With: “pasteurization”	Transcription error
25	18	Replace: “there was all the money went into BART.” With: “where most of the funding money went into BART.”	Clarification
28	23	Replace: “2” With: “\$200”	Transcription error
30	1	Replace: “pasturizing” With “pasteurizing”	Transcription error
31	13-14	Replace: “I - - I mean, definitely the Kombucha and the transportation as not an internet panel” With: “I do not recall if the internet panel was an internet panel.”	Transcription error
31	14-15	Replace: “There was actually the survey company went out to interview people”	Transcription error

PAGE(S)	LINE(S)	CORRECTION	REASON
		<p>With:</p> <p>“There was actually the survey company who went out to interview people</p>	
31	22	<p>Replace: there was one that we had millions of the frequent”</p> <p>With</p> <p>“there was one where we had millions of the frequent”</p>	Clarification
32	20	<p>Replace: “number, 50 years old,”</p> <p>With:</p> <p>“Respondents, the first 50 or so”</p>	Transcription error
33	7-8	<p>Replace: “clear understanding of the 493 versus no, the seven individuals.”</p> <p>With:</p> <p>“it says that 493 had the understanding, and seven did not.”</p>	Clarification
34	23	<p>Replace: “Ms. Kim was more junior”</p> <p>With:</p> <p>“Ms. Kim is a more junior staff”</p>	Transcription error
36	11	Strike: “only fresh ingredients”	Transcription error
36	13	<p>Replace: “source”</p> <p>With:</p> <p>“indication”</p>	Transcription error
38	21-23	<p>Replace: “The randomization was done for each incoming for the respondent, there was a 50-50 chance that they were called one way.”</p> <p>With:</p> <p>“the randomization was done such that each respondent had a 50-50 chance to be assigned to Orijen or Acana.”</p>	Clarification

PAGE(S)	LINE(S)	CORRECTION	REASON
38	24-25	Replace: "I'd" With: "Let's"	Transcription error
38	25	Replace: "that one comes up 247 and one" With: "heads comes up 247 and one"	Clarification
43	18	Replace: "scientific manual of evidence." With: "reference manual of scientific evidence."	Transcription error
47	8-9	Strike: "So that's kind of what I simply in - - paraphrased."	Duplicative
48	8	Strike: lines 8-9 I checked my report and in paragraphs 114 and 117 the use of decoys is explained.	Misspoke based on recollection
49	21	Replace: "improve" With: "include"	Transcription error
50	3	See Boedeker Report paragraphs 114 and 117 for definition of decoys.	Clarification
50	19	Replace: "product" With: "product labeled as"	Transcription error
56	11	Replace: "that." With: "measuring behavior changes."	Clarification
56	19	Replace: "I don't recall that." With: "The prices were actual prices for Acana or Orijen."	Clarification based on my report
57	21	Replace: "in"	Transcription error

PAGE(S)	LINE(S)	CORRECTION	REASON
		<i>With:</i> “it”	
59	6-8	<i>Replace:</i> “In general, when opinions are asked, give you an example of rotating instructions wouldn’t make sense if you asked which state do you live in.” <i>With:</i> “In general, when opinions are asked, giving you an example of rotating instructions wouldn’t make sense if you asked which state do you live in.”	Transcription error
60	5	<i>Replace:</i> “auto” <i>With:</i> “Order”	Transcription error
60	17	<i>Insert:</i> “each respondent always saw the same order from strongly disagree to strongly agree but the order was randomized across respondents meaning some respondents always saw from strongly disagree to strongly agree.” <i>After:</i> “strongly agree.”	Clarification
61-62	25; 7-11	<i>Q:</i> “were all four of the conjoint surveys scaled at the time?” <i>A:</i> “September, October 2020 would have been too early for these three states. So I have to check that date.” <i>Correct date should be:</i> “Survey 1 Orijen Misstatements: 2/1/2021 – 2/11/2021 Survey 2 Orijen Omission: 1/20/2021 – 1/24/2021 Survey 3 Acana Misstatements: 12/8/2020 – 12/21/2020 Survey 4 Acana Omissions: 1/25/2021 -1/28/2021	Clarification

PAGE(S)	LINE(S)	CORRECTION	REASON
		Survey 5 Consumer Expectation Survey: 2/17/2021 – 2/23/2021”	
62-63	25; 1-2	<p>Replace: “And it was definitely done - - not in September, October 2020, it was definitely done in 2021, but I don’t recall the correct or exact dates.”</p> <p>With:</p> <p>Correct date should be: “Survey 1 Orijen Misstatements: 2/1/2021 – 2/11/2021 Survey 2 Orijen Omission: 1/20/2021 – 1/24/2021 Survey 3 Acana Misstatements: 12/8/2020 – 12/21/2020 Survey 4 Acana Omissions: 1/25/2021 -1/28/2021 Survey 5 Consumer Expectation Survey: 2/17/2021 – 2/23/2021”</p>	Clarification
63	11	<p>Replace: “lone”</p> <p>With:</p> <p>“low”</p>	Transcription error
70	12	<p>Replace: “200”</p> <p>With:</p> <p>“\$200”</p>	Transcription error
73	5-6	<p>Replace: “It’s looking at it and basically take the union in the sense.”</p> <p>With:</p> <p>“One must take the individual values and then eliminate the overlap to get the joint impact of all omissions and misrepresentations.”</p>	Clarification
73	8	<p>Replace: “of each other”</p> <p>With:</p> <p>“on each other”</p>	Transcription error

PAGE(S)	LINE(S)	CORRECTION	REASON
74	4	Replace: “function” With: “functional form”	Transcription error/Clarification
74	19-20	Replace: “they will be caught,” With: “then the model will detect them and properly incorporate them,”	Clarification
75	6	Replace: “hundreds of thousands” With: “hundreds or thousands”	Transcription error
75	8-9	Replace: “the particular regression of prior selection.” With: “the code for the regression specification to calculate the joint impact of multiple factors.”	Misspoke/Clarification
75	20-21	Replace: “ultimately would be found to be - - or felt it might be found to be liable for.” With: “Champions would ultimately be found liable for.”	Clarification
77	3-4	Replace: “individually that the server resided in assigning to” With: “that the model resulted in computing for each individual attribute”	Transcription error/Clarification/Misspoke
78	10	Replace: “edited” With: “additive”	Transcription error
82	25	Strike: “of”	Transcription error

PAGE(S)	LINE(S)	CORRECTION	REASON
83	6	Replace: “drop-in” With: “appropriate”	Transcription error
84	8	Replace: “Here I’m referring to by” With: “What I am referring to here as”	Transcription error/Misspoke
84	10	Replace: “first” With: “purchase”	Transcription error
84	11	Replace: “this” With: “the”	Transcription error
84	17	Replace: “producer” With: “producer’s”	Transcription error
84	24	Insert: “to” After: “part-worth”	Transcription error
85	10,11,14	Replace: “willingness to pay” With: “willingness-to-pay”	Transcription error
85	12-13	Replace: “the market consumer” With: “the marginal consumer”	Transcription error
86	3	Add: “or” Between: “producer manufacturer”	Transcription error
86	1	Replace: “willingness to pay” With:	Transcription error

PAGE(S)	LINE(S)	CORRECTION	REASON
		“willingness-to-pay”	
86	11	<i>Add:</i> “the” <i>After:</i> “by”	Transcription error
87	9	<i>Replace:</i> “to consumer” <i>With:</i> “per consumer”	Transcription error
87	12	<i>Replace:</i> “conjoined” <i>With:</i> “conjoint”	Transcription error
88	5	<i>Add:</i> “not” <i>Between:</i> “are significantly”	Transcription error
89	23	<i>Replace:</i> “arrow” <i>With:</i> “error”	Transcription error
90	7-8	<i>Replace:</i> “- - and then” <i>With:</i> “are”	Transcription error
90	9	<i>Replace:</i> “that they are being” <i>With:</i> “will be”	Transcription error
91	5	<i>Replace:</i> “going to the - - what’s called” <i>With:</i> “will be the input to”	Clarification
91	10	<i>Strike:</i> “for” <i>Before the word:</i> “different”	Transcription error

PAGE(S)	LINE(S)	CORRECTION	REASON
91	14	Replace: “then” With: “this”	Transcription error
92	1	Insert: “for example” Between: “that has”	Clarification
92	1-2	Strike: “I have - - or the product has”	Misspoke
92	3	Replace: “- - the recipe I was saying.” With: “the same recipe”	Misspoke
93	5	Strike: “is the - -“	Misspoke
93	6	After: “omissions” Insert: “surveys”	Clarification
93	8	Replace: “drop-in” With: “decrease in”	Misspoke
102	6	Replace: “ edited.” With: “added.”	Transcription error

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the foregoing changes to the transcript of my deposition, taken on March 16, 2021 are true and correct, and the transcript is deemed signed with these changes.

Executed on April 16, 2021, at Las Vegas, Nevada.



Stefan Boedeker
Deponent